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The Law
RELATING TO THE
SALMON FISHERIES
OF
ENGLAND AND WALES,
AS AMENDED BY
THE SALMON FISHERY ACT, 1873:



WITH THE
Statutes and Cases.

BY
J. W. WILLIS BUND, M.A., LL.B.
OF LINCOLN'S INN, BARRISTER-AT-LAW,
VICE-CHAIRMAN SEVERN FISHERY BOARD.

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DEDICATION.

LINCOLN'S INN,
September, 1873.

MY DEAR MR. DILLWYN,

I am quite aware that at the present day Dedications of Books mean very little, still I have ventured to dedicate this one to you, for two reasons: First, because if it had not been for your Act of last Session it would never have been written; and, secondly, to place on record the fact that you are, I believe, the only private member who ever passed a Salmon Fishery Act, and that all those who are in any way engaged with the Law of Salmon Fisheries may know to whose unflagging labour, tact and energy they and the country are indebted for "The Salmon Fishery Act, 1873," or, as it should more properly be called, "DILLWYN'S ACT."

Yours very sincerely,

J. W. WILLIS BUND.

L. L. DILLWYN, Esq., M.P.

PREFACE.

THE following pages are an attempt to classify and arrange systematically a subject which hardly admits of classification or systematic treatment. Although Salmon Fishery Law only dates from 1861, yet the Statutes in regard to it are already becoming as confused a mass of law as the Sanitary Acts have already become.

As by the Salmon Fishery Act, 1873, very great and important changes have been made in the law, the present seemed a favourable time to make the attempt. The object of this Book is not so much to be a legal treatise as a guide to conservators and others who may have to carry the law into practice.

From some experience, as a member of a Board of Conservators, the Author has found the want of a book wherein could be seen at a glance what the law on a particular point is, without the trouble of referring backwards and forwards to the various sections of

different Acts and reports of different cases. The object aimed at has been to make each Chapter a complete statement of the law contained in it, and at the end of the Chapter to give the Sections of the Acts of Parliament that refer to the subject of the Chapter. The Sections are printed as they are amended, and as they would read if the law was consolidated. Words and paragraphs are therefore often inserted and omitted which are or are not to be found in the text of the Statute. It is hoped that thus each person will at once be able to find what the law is—at present no easy task. For the use of those who prefer to consult the Acts themselves, the Statutes have been printed in full in the Appendix.

As persons engaged in the administration of the Salmon Fishery Law often live far from law libraries, and are unable to refer to the authorities, the decisions on the Salmon Fishery Acts have been given at great length, so as to render a reference to the authorities needless in most cases. In addition to the Salmon Fishery Acts, the Acts incorporated with or referred to in them will be found in the Appendix, so that it is hoped that the Book will contain all that conservators and others engaged in administering the Law will require in ordinary cases.

The Author feels bound to apologize for the size of the Book. As originally designed, it was not intended to have been more than half its present bulk ; but as it progressed it was found that a book in any way aiming at completeness could not be condensed. If, however, it is found to contain all that those who consult it for the purpose of carrying the Law into effect require, its size will perhaps be forgiven.

LINCOLN'S INN,

September, 1873.

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THE

Law of Salmon Fisheries.

INTRODUCTION.

THE existing law as to salmon fisheries is contained in six acts of parliament, the first of which was passed in the year 1861. Before that time there were no less than twenty-six public statutes on the subject of salmon (*a*). The multiplicity, confusion and uncertainty of the law rendered it practically inoperative. And one of the causes to which the Royal Commission of 1860, that was appointed to inquire into the decay of the salmon fisheries of England and Wales, attributed their decline, was this confusion and uncertainty of the law. Accordingly the Salmon Fishery Act of 1861 (*b*), which was based upon the report of that commission, repealed all the previous acts, and became the foundation of the present law.

That act prohibited certain ways of destroying fish, as by polluting the water, using lights or

Salmon
Fishery Act,
1861.

(*a*) For a list of these acts, see the schedule to the Salmon Fishery Act, 1861, Appendix.

(*b*) 24 & 25 Vict. c. 109.

spears for taking salmon, using small-meshed nets, new-fixed engines, and the capture of fish at mills and weirs. It prohibited the capture of unclean and unseasonable salmon and the young of salmon; made a uniform close season for England and Wales; introduced a weekly close season of forty-two hours; made provision for the erection of fish-passes over dams, and placed restrictions upon the use of fishing weirs; vested the central authority of the salmon fisheries in the Home Office, and provided for the appointment of inspectors to see that the law was thoroughly carried out.

Salmon Acts
Amendment
Act, 1863.

Although the act prohibited the sale of salmon in England and Wales during close time, it did not contain sufficient provisions to meet the case of the capture of unseasonable salmon in England and its exportation abroad, especially to France, for sale. Accordingly, in 1863, an act was passed (*c*), prohibiting the exportation of salmon during the annual close time.

Salmon
Fishery Act,
1865.

In carrying the Act of 1861 into execution various defects were found in it: no local authority was legally constituted to carry out the act, and no provision was made for raising funds to protect the rivers. To meet these difficulties, in 1865 the Salmon Fishery Act, 1865 (*d*), was passed, which provided machinery by which all the salmon rivers in the country might be divided into fishery districts, placed under the control of local boards of

(*c*) 26 Vict. c. 10.

(*d*) 28 & 29 Vict. c. 121.

conservators elected by the magistrates in quarter sessions. To these bodies the management of the fisheries was given, and they were authorized to raise the money necessary for protecting the river by imposing a licence duty upon the instruments used in their district for the capture of salmon. They were also empowered to appoint officers—water bailiffs—to protect the fisheries and see that the law was duly carried out. It was found that as fish increased the engines for their capture, and especially fixed engines, increased in the same proportion. The legality of many of these engines was very doubtful; but if any person was charged with using an illegal engine he at once set up a claim of right, and thereby ousted the jurisdiction of the magistrates in the case, leaving the boards of conservators to the costly and uncertain remedy of an action at law if they disputed his right to use the engine. The Act of 1865 accordingly constituted a tribunal for the trial of the legality of these engines, the Special Commissioners of English Fisheries, whose duty it was to decide upon the legality or illegality of every fixed engine for catching or facilitating the capture of salmon throughout the country.

In 1870, it having been found that the Salmon Exportation Act was evaded by the capture of unclean salmon in the open time in England and exporting it to France, an act, The Salmon Acts Amendment Act, 1870 (*e*), was passed, which

Salmon Acts
Amendment
Act, 1870.

(*e*) 33 & 34 Vict. c. 33.

extended the time during which it is presumed that the exportation of salmon is illegal to the 30th of April in each year.

Act discontinuing the special commissioners.

The Special Commissioners for England Fisheries having finished, or nearly finished, the work for which they were appointed, were discontinued by an act passed in the beginning of 1873(*f*), "An Act to discontinue the office of special commissioners of salmon fisheries in England."

The Salmon Fisheries Act, 1873.

The Salmon Fisheries Act, 1873(*g*), is the latest addition to salmon legislation; it is intituled "An Act to amend the law relating to salmon fisheries in England and Wales." It amends and extends the law as to fishery districts, the modes and times of taking and selling fish, the issuing of licences, the powers of water bailiffs, the law as to the erection of fish-passes and gratings to artificial channels, and introduces two new and most important principles:—(1.) To the constitution of boards of conservators a representative element is added: the fishermen in public waters for every fifty pounds of licence duty they pay elect a member. (2.) Power is given to boards of conservators to make bye-laws for the better protection, preservation and improvement of the salmon fisheries within their district. This power, so long agitated for by the various fishery boards, who have for some time past discovered that the varying cir

(*f*) 36 Vict. c. 13.

(*g*) 36 & 37 Vict. c. 71.

cumstances of each river require special legislation to meet them, is certainly the most valuable provision of the Act of 1873, and one from which great good to the fisheries of England and Wales may reasonably be anticipated.

Such are the statutes by which at the present day the salmon fisheries are regulated. The acts will be found printed in extenso in the Appendix. At the end of each chapter the portion of the acts relating to that chapter are collected and arranged, for the convenience of those who want to see at a glance what the law upon a particular point is, without wading through the whole of the statutes.

CHAPTER I.

DEFINITIONS.

SECT. 1. PRELIMINARY.

2. DEFINITION.

SECT. 1.—*Preliminary.*

Short title
of acts.

EACH of the six salmon fishery acts, with the exception of the act abolishing the special commissioners, has a short title by which it may be cited for all purposes.

24 & 25 Vict.
c. 109.

The 24 & 25 Vict. c. 109 (An Act to amend the law relating to fisheries of salmon in England), may be cited as "The Salmon Fishery Act, 1861" (a).

26 Vict. c. 10.

The 26 Vict. c. 10 (An Act prohibiting the exportation of salmon at certain times), as "The Salmon Acts Amendment Act, 1863" (b).

28 & 29 Vict.
c. 121.

The 28 & 29 Vict. c. 121 (An Act to amend the Salmon Fishery Act, 1861), as "The Salmon Fishery Act, 1865;" and that and the Act of 1861 may be cited as "The Salmon Fishery Acts, 1861 and 1865" (c).

(a) 24 & 25 Vict. c. 109, s. 1.

(b) 26 Vict. c. 10, s. 1.

(c) 28 & 29 Vict. c. 121, s. 1.

The Act of 1870 (33 & 34 Vict. c. 33, An Act to amend the acts relating to the export of unseasonable salmon), as "The Salmon Acts Amendment Act, 1870" (*d*). 33 & 34 Vict. c. 33.

There is no short title to the act abolishing the special commissioners of English fisheries (36 Vict. c. 13). 36 Vict. c. 13.

The 36 & 37 Vict. c. 71 (An Act to amend the law relating to salmon fisheries in England and Wales), may be cited for all purposes as "The Salmon Fishery Act, 1873;" and the three Salmon Fishery Acts of 1861, 1865 and 1873, may be cited together as "The Salmon Fishery Acts, 1861 to 1873" (*e*). 36 & 37 Vict. c. 71.

The Salmon Fishery Act, 1861, came into operation on the 1st of October, 1861 (*f*). Commence-
ment of acts.

The Salmon Acts Amendment Act, 1863, on the day of its passing, the 20th April, 1863.

The Salmon Fishery Act, 1865, on the day of its passing, 5th July, 1865.

The Salmon Acts Amendment Act, 1870, on the 3rd September, 1870 (*g*).

The Act abolishing the Special Commissioners on the 24th April, 1873.

And the Salmon Fishery Act, 1873, on the 1st of September, 1873 (*h*).

The Salmon Fishery Act, 1861, was passed on Passing of
the Salmon

(*d*) 33 & 34 Vict. c. 33, s. 1.

(*e*) 36 & 37 Vict. c. 71, s. 1.

(*f*) 26 Vict. c. 10, s. 3.

(*g*) 33 & 34 Vict. c. 33, s. 2.

(*h*) 36 & 37 Vict. c. 71, s. 3.

Fishery Act,
1861.

Matters that
take effect
from that
day.

the 6th of August, 1861. This date is important in salmon fishery law for the following reasons:—

- (1) No fixed engine that was not legally in use at that date, or in one of the four preceding years, can now be used for catching salmon (*h*);
- (2) No dam, except such fishing weirs and fishing mill-dams as were lawfully in use at that date, can be used for catching salmon (*i*);
- (3) To any dam existing at that date a board of conservators, or a proprietor of a fishery, may attach a fish-pass (*j*);
- (4) Every person who after that date builds a new dam, or raises or alters an old dam, or rebuilds a dam to the extent of half of its length, or creates, causes or increases any obstruction to the passage of salmon, so as to create additional obstruction to fish, is liable to attach, and maintain attached to such dam or obstruction, a fish-pass of such form as the Home Office may determine (*k*).

Commence-
ment of
Salmon
Fishery Act,
1861.

The commencement of the Salmon Fishery Act of 1861, 6th August, 1861, is also important, for—

- (1) Within six months of that date the proprietors of any artificial channel for supplying towns with water, or any navigable canal, must place and maintain a grating of such form as one of the inspectors shall approve (*l*);

(*h*) 24 & 25 Vict. c. 109, s. 11; 28 & 29 Vict. c. 121, s. 39.

(*i*) Sect. 12.

(*j*) Sect. 23.

(*k*) 36 & 37 Vict. c. 71, s. 46.

(*l*) 24 & 25 Vict. c. 109, s. 13.

- (2) Within twelve months of that date the owners of all fishing weirs are to make and maintain free gaps in accordance with the 27th section of the Salmon Fishery Act (*m*);
- (3) Within six months from that date the owner of any box or crib in any fishing weir or fishing mill-dam must bring the same into conformity with the Salmon Fishery Act, 1861 (*n*).

The date of the passing of the Salmon Fishery Act, 1865 (5th July, 1865), is important, as—

Passing of
the Salmon
Fishery Act,
1865.

After that date the magistrates of any county through which a salmon river flows can apply to have the same formed into a fishery district (*o*).

The Salmon Fishery Acts do not extend to Scotland or Ireland, or to the river Tweed, as defined by the Tweed Fisheries Amendment Act, 1859 (*p*). They, however, include the river Esk with its banks and tributary streams up to their source (*q*). And for the purposes of the Salmon Acts Amendment Act, 1863, no part of the United Kingdom is to be regarded as parts beyond the seas (*r*).

Application
of acts.

With regard to the construction of the acts, the Salmon Fishery Acts, 1861, 1865, 1873, are

Construction
of acts.

-
- (*m*) 24 & 25 Vict. c. 109, s. 28.
 (*n*) Sect. 29.
 (*o*) 28 & 29 Vict. c. 121, s. 4.
 (*p*) 24 & 25 Vict. c. 109, s. 2.
 (*q*) 28 & 29 Vict. c. 121, s. 63.
 (*r*) 26 Vict. c. 10, s. 2.

to be read as one as far as consistent with their tenor (*t*).

There are, however, no clauses extending this construction to either the Salmon Acts Amendment Act, 1863, the Salmon Acts Amendment Act, 1870, or the act abolishing the special commissioners.

Statutes as to Preliminary Matters.

Short titles
of acts.

This act may be cited for all purposes as "The Salmon Fishery Act, 1861" (*u*).

This act may be cited for all purposes as "The Salmon Fishery Act, 1865," and this act and the Salmon Fishery Act, 1861, may be cited together as "The Salmon Fishery Acts, 1861 and 1865" (*x*).

This act may be cited for all purposes as "The Salmon Acts Amendment Act, 1863" (*y*).

This act may be cited for all purposes as "The Salmon Acts Amendment Act, 1870" (*z*).

An act to discontinue the office of special commissioners of salmon fisheries in England (*a*).

This act may be cited for all purposes as "The Salmon Fishery Act, 1873," and this act and the Salmon Fishery Acts, 1861 and 1865, may be cited together as "The Salmon Fishery Acts, 1861 to 1873" (*b*).

Commence-
ment of acts.

This act shall not come into operation until the first day of October, one thousand eight hundred and sixty-one (*c*).

This act shall not come into operation before the third day of September, one thousand eight hundred and seventy, which day

(*t*) 28 & 29 Vict. c. 121, s. 2; 36 & 37 Vict. c. 71, s. 2.

(*u*) 24 & 25 Vict. c. 109, s. 1.

(*w*) 28 & 29 Vict. c. 121, s. 1.

(*y*) 26 Vict. c. 10, s. 1.

(*z*) 33 & 34 Vict. c. 33, s. 1.

(*a*) 36 Vict. c. 13.

(*b*) 36 & 37 Vict. c. 71, s. 1.

(*c*) 24 & 25 Vict. c. 109, s. 3.

is hereinafter referred to as "the commencement of this act" (*d*).

This act shall not come into operation until the first day of September, one thousand eight hundred and seventy-three, which date is hereinafter referred to as the commencement of this act (*e*).

This act shall not extend to Scotland or Ireland, or to the River Tweed, as defined by the Tweed Fisheries Amendment Act, 1859 (*f*). Application of acts.

The River Esk, together with its banks and tributary streams up to their source, shall be deemed to be within the limits of the Salmon Fishery Acts, 1861 to 1873: provided that all offences against the said acts committed within Scotch jurisdiction shall be prosecuted and punished in manner directed by the Salmon Fisheries (Scotland) Act, 1862 (*g*).

No part of the United Kingdom, however situated with regard to any other part, shall be deemed for the purposes of this act to be parts beyond the seas (*h*).

This act, so far as is consistent with the tenor thereof, shall be read as one with the Salmon Fishery Act, 1861 (*i*). Construction of acts.

This act, so far as is consistent with the tenor thereof, shall be read as one with the Salmon Fishery Acts, 1861 and 1865 (*k*).

SECT. 2.—*Definition.*

Each of the Salmon Fishery Acts contains a number of definitions, some legal, some relating to fishing, some relating to places; they are scattered throughout the acts without any attempt at classification, and consequently it often happens

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- (*d*) 33 & 34 Vict. c. 83, s. 2.
 - (*e*) 36 & 37 Vict. c. 71, s. 3.
 - (*f*) 24 & 25 Vict. c. 109, s. 2.
 - (*g*) 28 & 29 Vict. c. 121, s. 63.
 - (*h*) 26 Vict. c. 10, s. 2.
 - (*i*) 28 & 29 Vict. c. 121, s. 2.
 - (*k*) 36 & 37 Vict. c. 71, s. 2.

that great difficulty is experienced in finding what is the exact meaning of any term used in the acts. The expression "fixed engine" is a very good example of this. Fixed engine is defined in the 4th and 11th sections of the Act of 1861, in the 39th of the Act of 1865, and the 4th of the Act of 1873, and each of these definitions adds something to the preceding.

The definitions from each of the acts have been here collected, classified and arranged alphabetically under three heads:—

- (1) Legal, those relating to procedure;
- (2) Technical, those relating to fish and fishing;
- (3) Local, those relating to places.

The legal definitions are—

"Court."	"Court" shall include two or more magistrates assembled in petty sessions (<i>l</i>).
"Clerk of the Peace."	"Clerk of the peace" includes the town clerk of any county of a city or county of a town (<i>m</i>).
"Home Office."	"Home Office" shall mean one of her Majesty's principal secretaries of state (<i>n</i>).
"Inspectors."	"Inspectors" shall mean the inspectors of salmon fisheries appointed under the provisions of the thirty-first section of the Salmon Fishery Act, 1861 (<i>o</i>).
"Occupier."	"Occupier" shall include any person for the time being in actual possession of the fisheries and premises in respect of which that word is used, whether such person is owner or not (<i>p</i>).
"Owner."	"Owner" shall mean and include any person receiving the rents of the property in respect of which that word is used from

(*l*) 24 & 25 Vict. c. 109, s. 4.
 (*m*) 28 & 29 Vict. c. 121, s. 38.
 (*n*) 24 & 25 Vict. c. 109, s. 4.
 (*o*) 36 & 37 Vict. c. 71, s. 4.
 (*p*) *Ibid*.

the occupier, or who would receive the same if such property were let to a tenant (g).

And for the purpose of the 49th section of the Salmon Fishery Act, 1873, the word owner shall be understood to mean any person or corporation who, under the provisions of the Lands Clauses Consolidation Act, would be enabled to sell and convey lands to the board of conservators (r).

"Person" shall include any body of persons, corporate or unincorporate (s). "Person."

"Quarter sessions" shall include "general sessions" (t). "Quarter sessions."

And in the case of a county of a city or county of a town, the council of such city or town assembled at any meeting of council (w).

"Returning officer" shall mean the chairman of any board of conservators, or any person appointed by writing under his hand to conduct the elections of boards of conservators in the manner prescribed in the Salmon Fishery Act, 1873 (x). "Returning officer."

"Secretary of state" shall mean one of her Majesty's principal secretaries of state (y). "Secretary of state."

"Water bailiff" includes any additional constable appointed under the statute 3 & 4 Vict. c. 88, s. 19 (z). "Water bailiff."

The technical, those relating to fish and fishing, are—

"Annual close season" and "weekly close season" shall mean the annual close season and the weekly close season for all kinds of fishing except by rod and line respectively applicable to and in force in the fishery district or place in which any offence charged shall be committed, and all penalties, forfeitures, proceedings, powers and things described in the seventeenth, twentieth, twenty-first and twenty-second sections of the Salmon Fishery Act, 1861, as applicable to the periods therein specified, "Annual close season and weekly close season."

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- (g) 36 & 37 Vict. c. 71, s. 4.
 - (r) 8 Vict. c. 18, s. 3.
 - (s) 24 & 25 Vict. c. 109, s. 4.
 - (t) 28 & 29 Vict. c. 121, s. 3.
 - (w) Sect. 38.
 - (x) 36 & 37 Vict. c. 71, s. 4.
 - (y) Ibid.
 - (z) 28 & 29 Vict. c. 121, s. 27

or intended to be specified, as the annual and weekly close seasons, shall be deemed to apply to the annual or weekly close seasons, as these may have been or shall be lawfully varied from time to time in each fishery district respectively (*a*).

"Close season for rods."

"Close season for rods" shall mean and include the annual season during which at any particular place it is or shall be unlawful at that place under the provisions of the Salmon Fishery Acts, 1861 to 1873, to fish for, kill, take or destroy, or attempt to kill, take or destroy, any salmon with a single rod and line (*b*).

"Dam."

"Dam" shall mean all weirs and other fixed obstructions used for the purpose of damming-up water (*c*).

"Fishing mill-dam."

"Fishing mill-dam" shall mean a dam used or intended to be used partly for the purpose of catching or facilitating the catching of fish, and partly for the purpose of supplying water for milling or other purposes (*d*).

"Fishing weir."

"Fishing weir" shall mean any erection, structure or obstruction fixed to the soil either temporarily or permanently across, or partly across, a river or branch of a river, and which is used for the exclusive purpose of catching or facilitating the catching of fish (*e*).

"Fixed engine."

"Fixed engine" shall include stake nets, bag nets, putts, putchers, and all fixed implements or engines for catching or for facilitating the catching of fish (*f*).

Any net secured by anchors or otherwise temporarily fixed to the soil (*g*).

Any net or other implement for taking fish fixed to the soil, or made stationary in any other way, not being a fishing weir or fishing mill-dam (*h*).

Any net placed or suspended in any inland or tidal waters unattended by the owner or any person duly authorized by the owner to use the same for catching salmon; and all engines, devices, machines or contrivances, whether floating or otherwise,

(*a*) 36 & 37 Vict. c. 71, s. 4.

(*b*) Ibid.

(*c*) 24 & 25 Vict. c. 109, s. 4.

(*d*) Ibid.

(*e*) 36 & 37 Vict. c. 71, s. 4.

(*f*) 24 & 25 Vict. c. 109, s. 4.

(*g*) Sect. 11.

(*h*) 28 & 29 Vict. c. 121, s. 39.

for placing or suspending such nets or maintaining them in working order or making them stationary (i).

"Grating" shall mean and include any device approved by "Grating." the secretary of state for preventing the passage of fish through any channel (k).

"Otter lath or jack" shall mean and include any small boat "Otter lath or jack." or vessel, board or stick, used for the purpose of running out baits, artificial or otherwise, across any portion of any lake or river, and whether used with a hand line or as auxiliary to a rod and line, or in any other way (l).

"Rod and line" shall mean single rod and line (m).

"Rod and line."

"Salmon" shall include all migratory fish of the genus salmon, whether known by the names hereinafter mentioned, that is to say, salmon, cock or kipper, kelt, laurel, girling, grilse, botcher, blue cock, blue pole, fork tail, mort, peal, herring peal, may peal, pugg peal, harvest cock, sea trout, white trout, sewin, buntling, guiniad, tube, yellow fin, sprod, herling, whiting, bull trout, whiting, scurf, burn tail, fry, samlet, smoult, smelt, skirling or scarling, parr, spawn, pink, last spring, hepper, last brood, gravelling, shed, scad, blue fin, black tip, fingerling, brandling, brondling, or by any other local name (n).

"Salmon."

And for the purposes of sections 8, 9 (o) and 14 of the Act of 1861 (p), and 38 of the Act of 1873, the word salmon includes trout and char (p).

"Strokehall or snatch" shall mean and include any instru- "Strokehall or snatch." ment or device, whether used with a rod and line or otherwise, for the purpose of foul-hooking any fish (q).

"Young of salmon" shall include all young of the salmon species, whether known by the names of fry, samlet, smolt, smelt, skirling or skarling, par, spawn, pink, last spring, hepper, last brood, gravelling, shed, scad, blue fin, black tip, fingerling, brandling, brondling, or by any other name, local or otherwise (r).

"Young of salmon."

(i) 36 & 37 Vict. c. 71, s. 4.

(k) Ibid.

(l) Ibid.

(m) Ibid.

(n) 24 & 25 Vict. c. 109, s. 4.

(o) 28 & 29 Vict. c. 121, s. 64.

(p) 36 & 37 Vict. c. 71, s. 18.

(q) Sect. 4.

(r) 24 & 25 Vict. c. 109, s. 4.

The local, those relating to places, are—

- “County.” “County” includes any riding, division, or liberty of a county having a separate court of quarter sessions (*s*), and a county of a city or county of a town shall for the purposes of this act be deemed to be a county (*t*).
- “Inland waters.” “Inland waters” shall mean all waters that are not tidal waters (*u*).
- Parts beyond the seas. No part of the United Kingdom, however situated with regard to any other part, shall be deemed for the purposes of the exportation of salmon between the 3rd September and the 30th April following to be parts beyond seas (*v*).
- “River.” “River” shall include such portion of any stream or lake, with its tributaries, and such portion of any estuary, sea, or sea coast, as may from time to time be declared, in manner provided in the Salmon Fishery Act, 1865, to belong to such river (*y*).
- “Salmon river.” “Salmon river” shall mean any river as above defined frequented by salmon or young of salmon (*z*).
- “Tidal waters.” “Tidal waters” shall include the sea, and all rivers, creeks, streams and other water as far as the tide flows and reflows (*a*).

(*s*) 28 & 29 Vict. c. 121, s. 3.

(*t*) Sect. 88.

(*u*) 24 & 25 Vict. c. 109, s. 4.

(*v*) 26 Vict. c. 10, s. 2.

(*y*) 28 & 29 Vict. c. 121, s. 3.

(*z*) Ibid.

(*a*) 24 & 25 Vict. c. 109, s. 4.

CHAPTER II.

FISHERY DISTRICTS.

If a salmon river runs through any county, riding, division or liberty of a county, the magistrates of such place may at any court of quarter sessions, after having given such notice as the special practice of the sessions for their county requires, by a written application (signed by the chairman) to the secretary of state, request him to form such river into a fishery district (a); or, if the river runs through a town which is a county, the application may be made by the town council, subject to the usual notice of business for such council meeting (b). The application may be made in either of the following cases:—

Application
for a fishery
district.

When appli-
cation may
be made.

- (1) If the salmon river is wholly within the county or town;
- (2) If the salmon river is partly within the county or town;
- (3) If there is more than one salmon river wholly or partly within the county or town, then in respect of all or each of such rivers (c).

But when the application is once made, the secretary of state has the exclusive right to de-

(a) 28 & 29 Vict. 121, s. 4.

(b) Sect. 88.

(c) Sect. 4.

termine what the extent of the district is to be.
Reg. v. Grey. This point was decided in the case of *The Queen v. Sir George Grey (d)*, a case arising out of the River Tees fishery district. The Tees is the boundary between the county of Durham and the North Riding of the county of York. The North Riding justices in quarter sessions, on the 17th October, 1865, passed a resolution authorizing an application to the secretary of state to form into a fishery district so much of the River Tees as is situate below the High Force, together with its tributaries, within the county of Durham and North Riding of Yorkshire, including such portion of the estuary of the Tees as is situate between Tod Point, in the parish of Kirk Leatham, in the said riding and the south end of the village of Seaton Carew, in the county of Durham. A copy of this resolution, signed by the chairman of the North Riding quarter sessions, was sent to the secretary of state.

On the 16th October, 1865, at the Durham quarter sessions, a resolution in precisely similar terms was passed and sent to the secretary of state.

In December an advertisement was published in the local newspapers and the Times, stating that the secretary of state intended to grant a certificate, forming the River Tees into a fishery district, with limits far more extended than either of the courts of quarter sessions contemplated.

(d) L. R., 1 Q. B. 469; 12 Jur., N. S. 685; 35 L. J., M. C. 198; 14 W. R. 671; 14 L. T., N. S. 477.

The North Riding justices objected to the extended district on the ground that the secretary of state had no power to grant a more extended district than had been applied for, and accordingly obtained a rule calling upon the secretary of state to show cause why a certiorari should not issue to remove the certificate into the Queen's Bench. But the court (Blackburn, Mellor and Lush, JJ.) unanimously held the secretary of state had power to include within the district such extent of river and sea coast as he in his discretion thought fit. Mr. Justice Blackburn, in delivering judgment, said, "By section 4, the justices of any county in quarter sessions may apply to the secretary of state to form into a fishery district all or any of the salmon rivers lying wholly or partially within their county; but the mode in which the district is to be formed, and its limits declared, is by the certificate of the secretary of state, which, presumably, is to be after and not before the quarter sessions have initiated the proceedings by applying to him, stating it is fit that a certain river or rivers should be formed into a district; so that the secretary of state has no jurisdiction until the quarter sessions have determined the primary question of forming their rivers into a district, and when they have done this, then the legislature have intrusted to the secretary of state the duty of carrying out the object of the justices; and although no limit is apparently put on his power, the legislature presumes, no doubt, that he will, of course, act reasonably in the formation of any proposed

district. That the power to 'form' the district is in the secretary of state alone is shown clearly by the clause at the end of section 4, which enacts that the secretary of state 'may form such districts accordingly, and may include in it any river or parts thereof, although not situate in the county on behalf of which the application is made;' and I do not see how the justices of Durham or Yorkshire would have any jurisdiction to say what should be the limits of a district in the other county; and it is reasonable that this should be left to the determination of an independent authority like the secretary of state. Section 5 states how the secretary of state is to form the district, by declaring the limits in a certificate under his hand, but he is to give a month's previous notice of the intended limits, in order that the persons interested in the county which has applied, or in the neighbouring counties, if affected by it, may make any objection to the proposed boundaries, so that the secretary of state may not make improper boundaries, or form a district without due inquiry. It appears to me clear, therefore, that the secretary of state had jurisdiction to grant this certificate, and the rule must be discharged" (*d*).

This decision is of importance, as it shows that if any board of conservators apply for an alteration of their district, when once the application is made the secretary of state can alter the district not only as requested by the board, but as he pleases.

When the application is made, the secretary of state, by a certificate under his hand, defines the limits he chooses to assign to the district, either by reference to a map or otherwise (e). Definition of a district.

Before the certificate is granted, a month's notice of the secretary of state's intention is to be advertised in a daily London morning newspaper, and in such local newspapers circulating within the intended district as he shall direct (e). Notice to be given.

As soon as the certificate is granted, a copy is to be advertised in the same London and local newspapers (f). Advertisements.

If when a fishery district is formed the board of conservators of that district require any alteration to be made in its limits, they must take the following steps (g):— Alteration of district.

- (1) Give three calendar months' notice in writing to any other board or boards of conservators which may be affected by such alteration; or, If no board is affected, to the magistrates in quarter sessions of any county, the whole or any part of which will be affected by being either included or excluded in whole or to a greater or less extent within the fishery district by such proposed alteration. Steps to be taken.
- (2) Such notice must specify what is the precise nature of the proposed change, which must be one of the following:—
 - (i) Enlarging the district by adding to it a place not within any district.

(e) 28 & 29 Vict. c. 121, s. 5.

(f) Ibid.

(g) 36 & 37 Vict. c. 71, s. 5.

- (ii) Reducing the district by taking away from it some place already within its limit.
 - (iii) Uniting the district to any other district or districts.
 - (iv) Taking a part from some other district and adding it to the district.
 - (v) Taking a part from it and creating such part into a separate district.
 - (vi) Taking a part from it and from some other district or districts and combining them into a new district.
 - (vii) Taking a part from it and adding it to some other district (*g*).
- (3) Such notice is to be then advertised for at least two successive weeks in one or more local newspapers (*g*).
- (4) On receipt of such notice, the secretary of state, if he agrees to make any alteration, must one month prior to his granting the certificate publish a notice of his intention to make such alteration, specifying the alteration he will make, in one daily morning London newspaper, and in such newspaper or papers circulating within the intended limits as he shall think fit (*h*).
- (5) At the expiration of a month after such notice the certificate will be granted, defining such alterations by reference to a map or otherwise, and, when so granted, is to be advertised once in some daily morning London

(*g*) 36 & 37 Vict. c. 71, s. 5.

(*h*) Ibid.; 28 & 29 Vict. c. 121, s. 5.

newspaper, and once a week for two consecutive weeks in some local newspaper or newspapers published or circulated in the district affected by such alteration (*h*).

- (6) The certificate is to transfer and apportion all existing contracts, debts, mortgages, liabilities and assets among such altered boards (*i*).

Until the alteration is fully carried into effect and the new districts fully constituted, the power of the existing boards continue (*i*).

Three things will here be noticed as not provided for— Matters un-
provided for.

- (1) If one board desire to be annexed to any other board the secretary of state can do so without any inquiry ;
- (2) If a board apply for any alteration, however trivial, which does not affect any other district, if the secretary of state so pleases he can at once add such board to another board, and if he thinks fit, without notice to the other board ; so that a board may have its district added to or diminished by the secretary of state without their knowledge, and, if *Reg. v. Grey* (*j*) is good law, without any appeal ;
- (3) That as no time is fixed for the alteration to come into effect, very difficult questions might arise in regard to licence duties in the

(*h*) 36 & 37 Vict. c. 71, s. 5; 28 & 29 Vict. c. 121, s. 5.

(*i*) 36 & 37 Vict. c. 71, s. 5.

(*j*) L. R., 1 Q. B. 469.

new district; *e.g.*, if a portion of district A. was added to district B., and the alteration came into effect, say on the 1st June, would a licence holder, who had taken out a licence to fish in A., be entitled to fish in B. without taking out a fresh licence? Of course, as the secretary of state has full power to fix the time at which his certificate will come into operation, he would always fix the beginning of a fishing season and so avoid the difficulty.

Effect of alteration upon members of board of conservators.

If the effect of the alteration is to include an additional part of a county which was not wholly or partly included before, then the secretary of state is to fix the number of additional members or new members that are to be appointed by quarter sessions in respect of such additional place. If the effect is to exclude any part of a county, the whole or part of which was previously included, then the secretary of state is to fix the reduction in the number of members elected by such county. If the whole of a county is excluded all the members of the board appointed by that county cease to be members. If the severed part of any district is made into a separate district, or if parts severed from different districts are united into one, the rules as to the election of conservators fixed by the Salmon Fishery Act, 1865, apply (*h*).

Common estuary.

The Salmon Fishery Act of 1865 (*i*) empowers the secretary of state, in a case where more than

(*h*) 36 & 37 Vict. c. 71, s. 6; see post, pp. 36—41.

(*i*) Sect. 19.

one salmon river flows into a common estuary, to form that estuary and such parts of the adjoining sea coast as he shall think fit into a separate district. Such district may be placed either temporarily or permanently under the jurisdiction of any one or more of the boards of conservators of the rivers flowing into such estuary, or under the jurisdiction of a board composed of representatives from each river. And the joint board may be required to pay over the licence duties received by them to the boards of the rivers forming the estuary in such proportions as the secretary of state shall specify (*k*). At present there is no instance of this power having been exercised.

With regard to the evidence of the formation of a fishery district and the proof of the various necessary steps having been taken, the following rules apply:—

Evidence of
alteration.

- (1) A copy of a newspaper containing the advertisement of any alteration made in any district, or in the constitution of any board of conservators, is evidence of the advertisement having been given at the time the newspaper bears date (*l*);
- (2) A copy of the certificate of the secretary of state as to the formation of any fishery district, certified by the clerk of the peace of any county where the original is deposited that such copy is a true copy, is evidence that all the requisitions and formalities as

(*k*) 28 & 29 Vict. c. 121, s. 19.

(*l*) 36 & 37 Vict. c. 71, s. 7.

to the formation or alteration of any fishery district, mentioned in such certificate, have been complied with (*m*). Of course, in order to prove that the whole district has been duly formed and altered, copies, certified by the clerk of the peace, of each certificate as to the alteration and formation will be required.

Advertisements required for formation or alteration of district.

The following advertisements are required:—

I. Formation of district:

- (1) Advertisement in a London daily morning newspaper of the intention of the secretary of state to form a district (*n*);
- (2) Advertisement in such newspaper or newspapers published or circulating in the intended district as the secretary of state shall direct of such intention (*n*);
- (3) Advertisement in the same London daily morning newspaper of the granting of the certificate forming the district (*n*);
- (4) Advertisement in the same newspaper or newspapers published or circulating in the intended district of the granting of the certificate forming the district (*n*).

II. Alteration of district:

- (1) Notice of intention to apply for alteration to be advertised for two successive weeks in one or more local newspapers (*o*);
- (2) Advertisement in a London daily morn-

(*m*) 36 & 37 Vict. c. 71, s. 8.

(*n*) 28 & 29 Vict. c. 121, s. 5.

(*o*) 36 & 37 Vict. c. 71, s. 5.

- ing paper of the intention of the secretary of state to alter such district (*p*);
- (3) Advertisement in such newspaper or newspapers published or circulating within the district or districts affected by such alteration as the secretary of state shall appoint, of his intention to make the proposed alteration (*p*);
 - (4) Advertisement in the same London daily morning newspaper of the granting of the certificate making the alteration (*p*);
 - (5) Advertisement in the same newspaper or newspapers circulating within the district or districts affected by such alteration, of the granting of the certificate making the alteration (*p*).

The acts are silent upon the point as to who is to pay the expense of the advertisements; as the act does not compel the secretary of state to advertise, but only to direct in what newspaper the advertisement is to be inserted, the expense it appears must be borne by the board of conservators. In the case of alteration of districts no provision is made in the act as to which board is to pay the expenses; but it would seem that under the provision empowering the secretary of state to transfer and apportion any existing debts and liabilities among the altered boards he would have power to specify how the expenses of the alteration are to be borne.

Expense of
advertis-
ment.

(*p*) 36 & 37 Vict. c. 71, s. 5; 28 & 29 Vict. c. 121, s. 5.

Statutes as to Fishing Districts.

Application
for formation
of a district.

The justices of a county at any court of quarter sessions (due notice having been previously given according to the practice of the said sessions) (*n*), or if in a county of a city or county of a town, notice of the meeting of the council having been given in the usual way, the town council (*o*) may, by writing under the hand of their chairman, apply to one of her Majesty's principal secretaries of state to form into a fishery district or districts all or any of the Salmon rivers lying wholly or partly within their county, and the said secretary of state may form such district or districts accordingly, and may include in any district so formed any river or rivers, or parts thereof, although not situated in the county on behalf of which the application is made (*n*).

Limits of
river and of
fishery dis-
trict, how
settled.

The limits of a river shall be defined for the purposes of the Salmon Fishery Acts, and a fishery district shall be formed, by a certificate under the hand of one of her Majesty's principal secretaries of state, describing the limits of the river or district by a reference to a map or otherwise, as to the said secretary may appear expedient; but no such certificate shall be granted unless one month's previous notice of the intention of the said secretary to grant the same, and of the intended limits of the river or district, has been given by advertisement in such newspaper or newspapers published or circulating within the intended limits, and in such daily morning newspaper or newspapers published in London, as may be directed by the said secretary of state; and when a certificate has been granted a copy shall be advertised in such newspaper or newspapers (*p*).

Alteration of
district.

A board of conservators of any fishery district may, after giving three calendar months' notice in writing to any other board or boards of conservators affected by such alterations, or in case there is no board, to the justices of the peace of any county in quarter sessions assembled, the whole or any part of which shall be affected by such alteration, apply to the secretary of state to enlarge, reduce, or alter the limits of such district, or to combine two or more districts, or parts of districts; and, after such notice has been previously advertised for two suc-

(*n*) 28 & 29 Vict. c. 121, s. 4.

(*o*) Sect. 38.

(*p*) Sect. 5.

cessive weeks in one or more local newspapers, published or circulated within the district or districts affected by such alteration, the secretary of state may thereupon by his certificate enlarge, reduce, or alter such district, either by uniting it with any other district, or districts, or combining it with any other part or parts of a district or districts, or by severing any part from such district and forming it into a separate district, or uniting it with any other district, or by adding to such district any place not yet included in any district; and the certificate of the secretary of state embodying all such alterations shall be granted in accordance with the provisions of the Salmon Fishery Act, 1865, and shall transfer and apportion any existing contracts, debts, mortgages, liabilities, and assets among such altered boards. But no alteration of any district shall affect the power of any existing board or boards until the new districts are fully constituted (g).

When the effect of any such alteration is to include in a district either an additional portion of any county previously included, or a portion of a county not previously included, the justices of such county in quarter sessions assembled shall add such number of members to the existing board of the district as the secretary of state shall appoint; and where the effect of such alteration is to exclude altogether from the district any county, the whole of the members of the board appointed by such county shall cease to hold their offices at such board. When the effect of such alteration is to partially exclude from the district any county, the number of members representing that county shall be reduced to such number as the secretary of state shall appoint; and in case the effect of such alteration is to create the part severed from any district into a new district, or to unite the parts severed from different districts into a new district, then and in either of such cases the provisions of the Salmon Fishery Act, 1865, shall apply as if a new district had been created under the provisions of the fifth section of that act (r).

Where more than one salmon river not included in the same fishery district flows into a common estuary the said secretary of state may define the limits of such estuary, including therein any

Combined
district.

Provision as
to common
estuary.

(g) 36 & 37 Vict. c. 71, s. 5.

(r) Sect. 6.

portion of the adjoining sea or seacoast, and form it into a separate district, and place the whole of such district, either temporarily or permanently, within the jurisdiction of any one or more of the boards having jurisdiction over the salmon rivers flowing into the estuary, or place such district under the jurisdiction of a board composed of representatives from the other boards, and may require such board or boards to pay a certain proportion of the licence duties received by them to any other board or boards (*s*).

Notices to be published.

A notice of any alteration made in any district or in the constitution of any board of conservators in pursuance of the provisions hereinbefore contained shall be advertised once in some daily morning London newspaper and at least once a week for four consecutive weeks in some newspaper or newspapers published or circulated within the district or districts affected by such alteration. The production of a copy of a newspaper containing any such advertisement shall be evidence of such advertisement having been given at the time such newspaper bears date (*t*).

Copy of certificate of formation of districts to be evidence.

A copy of the certificate or certificates of the secretary of state deposited with the clerk of the peace of any county in relation to the formation, enlargement, combination, reduction or alteration of a fishery district granted in pursuance of the fifth section of the Salmon Fishery Act, 1865, or of this act, certified or purporting to be certified as a true copy by the clerk of the peace of such county, shall be evidence that all the requisitions contained in the Salmon Fishery Act, 1865, or in this act, relating to the formation, enlargement, combination, reduction or alteration of any fishery district have been complied with, and that such district has been duly formed, enlarged, combined, reduced or altered with the limits and in the manner specified in such certificate or certificates (*u*).

(*s*) 28 & 29 Vict. c. 121, s. 19.

(*t*) 36 & 37 Vict. c. 71, s. 7.

(*u*) Sect. 8.

CHAPTER III.

BOARDS OF CONSERVATORS.

SECT. 1. CONSTITUTION AND ELECTION.

- (i.) *Ex Officio Members.*
- (ii.) *Appointed Members.*
- (iii.) *Representative Members.*

2. POWER AND DUTIES.

SECT. 1.—*Constitution and Election.*

AN old statute of 1394 (a) provided, that the justices of the peace for the different counties should be the conservators of the statutes made touching salmon, and previously to the year 1865 the justices of the peace in quarter sessions appointed the conservators for the fisheries. This custom was expressly recognized by the Salmon Fishery Act, 1861, which provided, "that it should be lawful for the justices of the peace assembled at any general or quarter sessions of the peace from time to time to appoint conservators or overseers for the preservation of salmon, and enforcing for that purpose the provisions of that act within the limits of the jurisdiction of such justices" (b). This plan of each county appointing its own conservators was found to work very badly, for, to use the words of the

Justices of the peace for
merly ap-
pointed con-
servators.

Salmon
Fishery Act,
1861, s. 33.

(a) 17 Rich. 2, c. 9.

(b) 24 & 25 Vict. c. 109, s. 33.

preamble of the Salmon Fishery Act, 1865, "No provisions were made for securing the co-operation of the conservators of the different counties when a river frequented by salmon borders on or passes through several counties." And, consequently, each county, instead of regarding the general welfare of the river, looked entirely to its own.

Change made
by the Sal-
mon Fishery
Act, 1865.

The Act of 1865 was accordingly passed to remedy this defect in the law; it vested the control of the river in a board, the members of which were elected by each county through which the river ran. As the formation of these boards is voluntary, not compulsory, there are still a few rivers in England where no board exists, and to which the provisions of the 33rd section of the Act of 1861 yet apply. But in the generality of cases the salmon rivers are now placed under the jurisdiction of boards elected in pursuance of the Salmon Fishery Acts, 1865 and 1873. Wherever such is the case, the powers of all conservators or overseers for the preservation of salmon, appointed in pursuance of any other act of parliament, of charter or custom, and all powers of appointing the same, are absolutely determined within the limits of such district (b).

Salmon
Fishery Act,
1865, s. 17.

Present con-
stitution of
boards of
conservators.

Boards of conservators as constituted under the Salmon Fishery Acts, 1865 and 1873, are a body corporate (c), with a perpetual succession and a common seal, and with power to make contracts,

(b) 28 & 29 Vict. c. 121, s. 17.
(c) Sect. 21.

and to sue and be sued in a common name. They consist of three classes of members:—

- (i.) Ex officio ;
- (ii.) Appointed—those appointed by quarter sessions ;
- (iii.) Representative—those elected by the persons paying licence duty in public fisheries.

Different kinds of members.

(i.)—*Ex Officio Members.*

Under the Salmon Fishery Act, 1865, ex officio members of boards of conservators were—

Ex officio members under the Salmon Fishery Act, 1865.

- (1) Justices of the peace for any county, any part of which was in the limits of a fishery district, being owners or occupiers of land of the annual value of 100*l.* a-year abutting upon any salmon river within the same, and having a right of fishing in such river ;
- (2) Persons paying within any salmon fishery district licence duty to the amount of 50*l.* a-year (*d*).

By the Salmon Fishery Act, 1873, both these qualifications are repealed, and now the ex officio members of a board of conservators are (*e*)—

Ex officio members under the Salmon Fishery Act, 1873.

- (1) The owner or, if there are more owners than one, one of the owners of a fishery or fisheries in any fishery district, who is or are assessed to the poor-rate in respect of such fishery or fisheries on a gross estimated rental of 30*l.* a-year ;

(*d*) 23 & 29 Vict. c. 121, s. 14.

(*e*) 36 & 37 Vict. c. 71, s. 26.

Ex officio
members.

- (2) The occupier or, if there are more occupiers than one, one of the occupiers of any such fishery or fisheries ;
 (But in no case can both owner and occupier be at the same time ex officio members in respect of the same fishery. Either can be at any time a member, but not both at once (*f*).)
- (3) Owners of land of the annual value of 100*l.* a-year within the fishery district, fulfilling *all* the following conditions :—
- (a) Having a frontage of not less than a mile to a salmon river ;
 (But in counting the mile both banks of the river are to be reckoned, so that, in effect, it is a frontage of a mile on one bank or half a mile on both banks.)
- (b) Having *the* right to fish in the part of the river adjoining such frontage ;
 (It will be observed, that the definite article *the* is used here, and that to satisfy this condition a landowner must have not only *a* right of fishing, but *the exclusive right* of fishing in the river.)
- (c) Having paid licence duty in such district during the last preceding fishing season (*f*).

Unless all these three requisites are complied with, no person can act as an ex officio member of a board of conservators under the qualification.

Provision for
persons under
disability.

If any person who would be qualified to act as an ex officio member is under any legal disability,

(*f*) 36 & 37 Vict. c. 71, s. 26.

either as being a minor, idiot, lunatic, married woman, or if any corporation, company or fishery association, would, if they were individuals, be duly qualified as an ex officio member or members, then one of the guardians, trustees or committees of any minor, idiot or lunatic, the husband of such married woman, one of the members of the corporation, company or fishing association, or their attorney or agent, will be entitled to act as an ex officio member of the board of conservators within whose district the property in respect of which the qualification exists is situated (*g*). The object of the act being that property, not persons, should be represented. Of course it will be necessary for any of these persons, if they claim to act as ex officio conservators in respect of the landowner qualification, to have paid licence duty either in their own names or in that of the landowner during the preceding fishing season, otherwise they will not be duly qualified.

Before any ex officio conservator can take his seat at the board, or act in any way as a member, he must sign a declaration in the form prescribed by the board, setting forth the qualification in respect of which he claims to be entitled to act. Persons making a false declaration, or refusing to make a declaration and acting as members, are liable to a penalty of five pounds (*h*). Ex officio members are only entitled to act as such so long as they have the qualification mentioned in their

Declaration
to be signed
by ex officio
members.

(*g*) 36 & 37 Vict. c. 71, s. 27.

(*h*) Sect. 28.

declaration, and, if any district is altered, are only entitled to act as *ex officio* members in respect of the district in which their qualification is situate (*j*).

(ii.)—*Appointed Members.*

If fishery district lies wholly in one county.

When a fishery district is formed by the secretary of state, if the district comprises but one county, the magistrates of that county, assembled in quarter sessions, appoint the board of conservators and fix the time and place for the first meeting of the board (*k*).

If fishery district lies in several counties.

If, however, a fishery district does not lie wholly in one county, then the justices of any county in quarter sessions, or the town council of any town or city which is a county, may apply to the justices or town council of every other county to appoint three magistrates as a fishery committee for that county or town. Each county and county of a town appoints three members, and the whole form the joint fishery committee for the district (*l*).

Application for a fishery committee.

By whom to be made.

The application for such appointment is to be made by the clerk of the peace if in a county, or the town clerk if in a county of a town, within fourteen days after the sessions or town council are held at which the resolution to apply for a fishery committee is agreed upon, by letter to the clerks of the peace and the town clerks of all the other counties and counties of towns within the district requiring them at their next quarter sessions

(*j*) 36 & 37 Vict. c. 71, s. 28.

(*k*) 28 & 29 Vict. c. 121, s. 6.

(*l*) Sect. 7.

or town council meeting to appoint a fishery committee, and notice of the application is to be given for the next sessions or town council after the receipt of the notice (*m*).

To whom to be made.

At the next quarter sessions or town council, if the justices of any county do not appoint any members, then the members of the other counties can proceed without them; and the county or town who have not appointed is bound by the proceedings of the committee (*n*).

Proceedings at quarter sessions after notice.

As soon as any county or town has appointed a fishery committee, the clerk of the peace or the town clerk is to give notice by post to every other clerk of the peace or town clerk of a town which is a county in the district, stating the names and addresses of the persons appointed by his county or town as members of the joint committee (*o*).

Notice of appointment.

The clerk of the peace or town clerk of the place making the original application gives notice of the time and place where the joint fishery committee meet (*p*).

Notice of meeting.

The duties of a joint fishery committee are:—

Duty of joint fishery committee.

- (1) To elect a chairman who, if present, is to preside at all future meetings of the committee, if not present the members of the committee may elect one pro hâc vice (*q*):
- (2) To appoint the board of conservators for the district, and in doing so to settle (*r*),—
 - (a) The number of appointed members to be appointed as a board.

(*m*) 28 & 29 Vict. c. 121, s. 8.

(*n*) Sect. 9.

(*o*) Sect. 10.

(*p*) Sect. 10.

(*q*) Sect. 11.

(*r*) Sect. 12.

- (b) The number of members each county and county of a town appoints :
- (c) The names of the first members, distinguishing those appointed for each county, in doing which they may appoint all or any of their own number :
- (d) The time and place of the first meeting of the board :
- (e) The county which is to audit the accounts of the board :
- (3) To give notice by post of their disposition, under the five preceding sub-sections, to the clerks of the peace of each county and the town clerks of each town which is a county within the district (*s*).

Procedure of
joint com-
mittee.

The joint committee may, in order to settle the above matters, adjourn from time to time and from place to place. A third of the whole number of the committee are required to form a quorum. All questions are decided by a majority of votes. The chairman has a vote as well as his casting vote. No vacancies in their body invalidate their proceedings (*t*).

Dissolution of
joint fishery
committee.

When all the matters they have to settle have been agreed to, and the notices of their decision sent, the committee is ipso facto dissolved (*u*).

Alteration of
number of
members ap-
pointed by
each county
as fixed by
joint fishery
committee.

The Salmon Fishery Act, 1865, gave no power to rectify the number of members appointed by each county, if it was thought desirable. As the joint fishery committee appointed them so they had

(*s*) 28 & 29 Vict. c. 121, s. 13.

(*t*) Sect. 11.

(*u*) Sect. 13.

to remain. This has been provided for in the Salmon Fishery Act, 1873, which empowers the magistrates of any county in quarter sessions (and it would seem, though it is not clear, the town council of any town which is a county) to apply to the secretary of state to alter the number of appointed members of the board, and upon such application the secretary of state may, if he think fit, do so (x).

Salmon
Fishery Act,
1873, s. 9.

The following steps are necessary to be taken in order to get such alteration (x):—

Steps to be
taken to get
alteration of
number of
members of
a board.

- (1) Previous to the sessions at which such application is intended to be made, a month's notice in writing of the intended application is to be given to the board of conservators affected by it :
- (2) A resolution of quarter sessions that application be made to the secretary of state :
- (3) If the secretary of state determines that a *prima facie* case for alteration is made out, one month before the alteration is made a notice of the proposed alteration must be published in some newspaper or newspapers circulating within the district :
- (4) Before the expiration of the month, any person may state his objection to the alteration, and request an inquiry into the expediency of it :
- (5) The secretary of state may thereupon make or refuse to make the alteration or grant the inquiry :

- (6) The determination of the secretary of state as to the alteration is to be published in the newspaper or newspapers in which his intention to make the alteration was originally published (y).

Tenure of office by member of a board of conservators.

The number of members of the board being thus fixed, and the first members appointed, their offices last for one year only, and at the expiration of the year, if the district lies only in one county, the magistrates of that county in quarter sessions appoint the whole board for the next year, but if it lies in several counties, then the magistrates of each county at quarter sessions, and the town council of each town that is a county, annually appoint the number of members that the joint fishery committee originally, or the secretary of state has subsequently, fixed as the quota the county was to send to the board. Retiring members are eligible for re-election, and if no formal election is made by quarter sessions, then the old members retain their office until the new members are formally appointed (z).

Election of members by quarter sessions.

Notice of election to be sent by the clerk of the peace.

As soon as the election takes place, the clerk of the peace of each county, and the town clerk of each town which is a county, is required, under a penalty of two pounds, to send to the clerk of the board of conservators a notice of the annual appointment of the members for his county or town, with their names and addresses (a): and also to

(y) 36 & 37 Vict. c. 71, s. 9.

(z) 28 & 29 Vict. c. 121, s. 15.

(a) 36 & 37 Vict. c. 71, s. 10.

advertise the same after every election in some newspaper circulating in the county or town. If the board is appointed by a single county, no notice need be sent to the clerk of the board (b).

The advertisement of the appointment of the conservators should be made as soon as possible after the election has taken place, for after three months have elapsed from the date of the advertisement no objection in any legal proceedings can be made as to the validity of any orders or proceedings relating to the appointment of a board of conservators (c).

Objection to appointment of conservators cannot be made after three months.

A copy of the paper containing the advertisement of the appointment of the conservators is made receivable as evidence of such appointment having been made in all legal proceedings (c).

In the case of the River Esk, for the purpose of electing a board of conservators, the commissioners of supply in Scotland are to have the same privileges and duties as justices of quarter sessions in England (d).

(iii.)—*Representative Members.*

By the Salmon Fishery Act, 1873, all boards of conservators, within whose district there are any public or common fisheries, are, in addition to the ex officio and appointed members, also to have members elected by the persons who fish in public waters to represent the public fishermen. As this provision will only apply to those districts

Representative members.

(b) 28 & 29 Vict. c. 121, s. 16.

(c) Sect. 18.

(d) 36 & 37 Vict. c. 71, s. 12.

Different
kinds of
fisheries.

within which there are public or common waters, it will be as well before describing the mode of election to state what is the meaning of these terms. There is great confusion in the authorities as to the precise meaning of the different kinds of fisheries, but the general result of the cases seems to establish that the English law divides fisheries into four kinds:—

(1) Several
fishery.

- (1) A several fishery: that is, the exclusive right that the owner of land, or a person deriving his right from the owner of the land, adjoining a non-navigable river has *primâ facie* to the river and fishery. The law regards the river as so much land covered with water and belonging to the owner of the adjoining bank; if both banks of the river belong to the same person then he is entitled to the whole; if one only, then to half, “*usque ad medium filum aquæ*.” Although the point is disputed, and not free from doubt, the better opinion seems to be that a several fishery implies the ownership of the bed of the river (*f*); and in one of the last cases on the subject the Court of Queen’s Bench held themselves bound by the authority of *Holford v. Bailey* (*g*), that the allegation of a several fishery *primâ facie* imports ownership of the soil, though they are not necessarily united (*h*).

(*f*) *Seymour v. Lord Courtenay*, 5 Burr. 2814.

(*g*) 8 Q. B. 1000.

(*h*) *Marshall v. Ulleswater Steam Navigation Co.*, 3 B. & S. 753.

- (2) A free fishery: this is an exclusive right of fishing belonging to an individual in a place where some one else would be *primâ facie* entitled to fish, as, for example, in tidal navigable rivers. This right always owes its existence to an actual or presumptive grant from the Crown (i). (2) Free fishery.

Mr. Justice Willes, in his opinion in *Malcolmson v. O'Dea* (k), however, states (l) that a free fishery and a several fishery are the same thing. He says that the confusion that has existed in the ambiguous use of the word "free" from the time of 7 Hen. 7 downwards, was settled by the Exchequer Chamber in the case of *Holford v. Bailey* (m), "where it was clearly shown that the only substantial distinction is, between an exclusive right of fishery usually called 'several,' sometimes 'free' (used as in free warren), and a right in common with others, usually called 'common of fishery,' sometimes 'free' (used as in free port)." But with great submission, it does not seem that *Holford v. Bailey* decides the point. That case decided two things—first, that trespass will lie for fishing in a several fishery; and, secondly, that to the words "sole and exclusive fishery," as descriptive of a several fishery, no objection could be taken after verdict. But the court expressly declined to decide if such an objection might not have been taken on demurrer.

(i) *Duke of Somerset v. Fogwell*, 5 B. & C. 875.

(k) 10 H. L. 593.

(l) At p. 619.

(m) 13 Q. B. Rep. 426.

Whatever may be the true rule on the subject for the purposes of the Salmon Fishery Acts, several and free fisheries may be taken as identical.

(3) Common of fishery.

(3) A common of fishery: this may be either a free or a several fishery. It is a right of fishery belonging to a class of persons, and only members of that class are entitled to fish there, as, for example, members of a corporation. It is as much a private fishery as any of the others, but it differs from them in belonging to a class, not to an individual. It is a right of precisely the same nature as a common of pasture of turbary or of estovers.

(4) Common or public fishery.

(4) A common fishery or public fishery; that is, a fishery where all the Queen's subjects are entitled to fish: and generally this is so in all tidal waters and navigable rivers (*f*).

It is only in the last case that representative members of boards of conservators will have to be elected. In any district in which there is any water in which any of the public, as such, have a right to fish, in such districts and such only will additional members be elected.

Number of representative members.

The number of members to be elected as representatives depends upon the amount of licence duty paid, that is, licence duty for all modes of fishing except rod and line (*g*). For every fifty pounds or part of fifty pounds one mem-

(*f*) *Carter v. Murcott*, 4 Burr.; *Bagott v. Orr*, 4 B. & P. 472; *Malcolmson v. O'Dea*, 10 H. L. 598.

ber is elected. Thus—for £2 one member; for £50 : 0s. 1d. two members, and so on; an additional member being given for each fifty pounds or part of fifty pounds (*g*). The number of members is fixed by the amount of licence duty paid in the fishing season immediately preceding the election, and of course will vary nearly every year (*h*).

The following are the rules as to the election of representative members:—

Rules as to
the election
of repre-
sentative
members.

Number of
members
how fixed.

- (1) At a meeting of the board after the close of the fishing season, the clerk is to produce a statement of the money received by licences (*i*).
- (2) The board, after comparing the statement with the licences, are to decide how much was paid in respect of public fisheries (*i*). This, after the first election, will be comparatively an easy matter, as the licence for public and private waters are to be in different forms (*h*).
- (3) The number of members to be elected will then be fixed by dividing the amount of public licence duty, (except that arising from rods and lines,) by fifty.
- (4) A returning officer to conduct the election must be fixed upon; he must be either

Returning
officer—his
duties.

(*g*) 36 & 37 Vict. c. 71, s. 29.

(*h*) Sect. 30.

(*i*) Sect. 30, sub-sect. 1.

(*h*) Sect. 39, sub-sect. 5.

the chairman or some person appointed in writing by the chairman (*l*).

- (5) The newspaper or newspapers in which the result of the election is to be published is then to be fixed upon (*m*).
- (6) The returning officer signs and publishes a notice specifying the number of members to be elected (*n*).
- (7) A copy of this notice and of a nomination paper is to be sent to each voter, that is, to each licensee who has taken out a licence (other than with a rod and line) to fish in the public water in the district, and who is resident in or the owner of land within, or within ten miles of the boundary of the fishery district (*n*).

Inland boundaries of fishery districts.

There will be considerable difficulty in carrying out this provision as to residence, for the inland boundaries of the fishery districts have never been defined; until that is done, the safer course will be to send to all licence-holders, who have taken out licences to fish in public waters, the returning officer in his discretion rejecting as invalid those who reside clearly beyond the ten miles and own no land within that distance.

Nomination papers.

- (8) Such notice is to specify the last day on which the nomination papers are to be returned to the returning officer (*o*).

(*l*) 36 & 37 Vict. c. 71, s. 4.

(*m*) Sect. 30, sub-sect. 14.

(*n*) Sect. 30, sub-sect. 3.

(*o*) Sect. 30, sub-sect. 4.

- (9) The voter may nominate himself or any other person or persons he pleases, provided the whole number he nominates does not exceed the number to be elected (*p*).
- (10) Having filled up the nomination paper he must return it by post to the returning officer before the day named in the notice (*p*).
- (11) If the number nominated is less than or the same as the number to be elected, the returning officer shall certify the persons nominated to be duly elected.
- (12) If the number nominated exceed the number to be elected, then the returning officer shall fill up voting papers with the names of all the persons nominated in alphabetical order (*q*).
Voting papers.
- (13) One of such voting papers is to be sent to each voter (*q*).
- (14) On sending the voting paper the returning officer must name a day, not less than five nor more than ten from the day on which such voting paper is sent, upon which it must be returned to him (*q*).
- (15) In the presence of a witness the voter must write his initials or make his mark against the name or names of the person or persons for whom he intends to vote, and write the number of votes he intends to give opposite the candidate's name. He must then strike out the names of all the other candidates,
Rules for filling up voting papers.

(*p*) 36 & 37 Vict. c. 71, s. 30, sub-sect. 5.

(*q*) Sect. 30, sub-sect. 6.

and sign the voting paper with his name and address (*r*).

(16) The witness must in all cases sign the voting paper with his name and address (*r*).

(17) If the voter cannot write, the witness must attest the mark the voter makes against each name by writing his initials against the name of the candidate and against the voter's mark, and fill up the number of votes (*r*).

Forging
voting
papers.

(18) If any person or persons wilfully fabricates in whole or in part any voting paper, or alters, defaces, destroys, abstracts or purloins any voting paper, or falsely assumes to act on behalf of any person entitled to vote, or to attest the execution of any voting paper, he will be liable to a penalty of twenty pounds, or, at the discretion of the court, to three months' imprisonment with or without hard labour (*s*).

Number of
votes.

(19) A voter has votes up to five in proportion to the licence duty he pays,—

Exceeding £1 and not exceeding £2,
one vote;

Exceeding £2 and not exceeding £5,
two votes;

Exceeding £5 and not exceeding £10,
three votes;

Exceeding £10 and not exceeding £20,
four votes;

Exceeding £20, five votes (*t*).

(*r*) 86 & 37 Vict. c. 71, s. 80, sub-sect. 7.

(*s*) Sect. 33.

(*t*) Sect. 80, sub-sect. 8.

- (20) A voter may give all his votes to one candidate, or distribute them among the candidates, provided he does not vote for more candidates than there are persons to be elected (*u*).
- (21) Having filled up the voting paper, duly signed and attested, it is to be sent back to the returning officer before the day named as the last day for the return of papers (*x*). Voting papers to be returned to returning officer.
- (22) If a voter from any cause has not received a voting paper, on personally applying to the returning officer before the day fixed for the return of the paper, he is entitled to have one given him as of right (*y*).
- (23) Within four days after the day fixed for the return of the papers, the returning officer is to examine the voting papers, cast up the valid votes, and ascertain who is elected (*z*). Examination of voting papers.
- (24) If the returning officer finds that an equal number of votes have been given to two or more persons, one of whom only is entitled to be elected, he is in the presence of two or more witnesses to determine by lot the person who is elected, and the person so determined is to be deemed duly elected for all purposes (*a*). Equality of votes.

(*u*) 36 & 37 Vict. c. 71, s. 30, sub-sect. 9.

(*x*) Sect. 30, sub-sect. 10.

(*y*) Sect. 30, sub-sect. 11.

(*z*) Sect. 30, sub-sect. 12.

(*a*) Sect. 30, sub-sect. 15.

Notices of
election.

(25) The returning officer certifies in writing the persons who are elected (*d*).

(26) A notice by post of his election must be sent by the returning officer immediately after the result is known to each person elected (*e*).

(27) The names of all persons elected are to be published in such newspapers as the board may direct (*e*).

(28) The returning officer makes out a list containing the names of all persons nominated, and if there has been a contest the number of votes given to each, which list he signs and certifies as correct (*f*).

(29) The list and all the voting and nomination papers are to be delivered by the returning officer to the board at their next meeting (*f*).

Inspection of
voting papers.

(30) Any licence payer, whether for public or private fisheries, may, after the list is presented to the board, inspect the same gratuitously (*f*).

But the act is silent as to right to inspect either nomination or voting papers, and it would seem that these can only be inspected by members of the board. No provision is made for what is to become of the nomination and voting papers.

It will be seen that very important and onerous duties are thrown upon the returning officer; important—for, practically, power is given to him to

(*d*) 36 & 37 Vict. c. 71, s. 30, sub-sect. 12.

(*e*) Sect. 30, sub-sect. 14.

(*f*) Sect. 30, sub-sect. 13.

decide who is and who is not elected, as there is no appeal whatever or any mode of questioning his decision as to the validity of any votes; onerous—for he is subjected to a penalty of 5*l.* for wilfully neglecting or refusing to comply with any of the provisions as to elections (*g*).

The returning officer is entitled to be repaid by the board any expense which he may have incurred in conducting the election. At the first meeting of the board after the election he is to lay before the board an account of the expenses, which the board are to cause to be audited, and they may disallow any item they consider to be excessive or illegal (*h*). And there seems to be no power of appeal from the decision of the board as to what is illegal or excessive, for the costs cannot be recovered until audited. As soon as the accounts are audited the board are to pay the sum found due to the returning officer; if they do not, he can recover the amount by summary proceedings before two justices (*i*).

Expense of
returning
officer.

In case of any casual vacancy among the members of a board of conservators, either in those members appointed by quarter sessions or in those elected by licence payers, the vacancy is to be filled up by the board, but the person chosen to fill the vacancy will only hold his office for the time the member vacating it would have held it (*k*).

Casual
vacancies to
be filled up
by board.

(*g*) 36 & 37 Vict. c. 71, s. 32.

(*h*) Sect. 31.

(*i*) Sects. 31 and 62.

(*k*) Sect. 30, sub-sect. 16; 28 & 29 Vict. c. 121, s. 15.

New boards
continuation
of old boards.

The new board, when elected under the provisions of the Salmon Fishery Act, 1873, are to be considered as a continuation of, and these proceedings are to form part of, the proceedings of the boards appointed under the Salmon Fishery Act, 1865; and nothing in the Salmon Fishery Act, 1873, is to be deemed in any way to invalidate the proceedings of any board formed under the powers and authority of the Salmon Fishery Act, 1865 (*l*).

Vacancies in
boards not to
affect validity
of acts.

No act or proceeding of any board of conservators shall be questioned on account of any vacancy or vacancies in their body, or vitiated by reason of any defect in the qualification or appointment of any member or members (*l*).

First meeting
of new board.

The first meeting of the new board after the election is to be held annually on such day, after the day of election of the new members, as the chairman of the preceding year shall appoint (*m*).



SECT. 2.—*Powers and Duties.*

Meetings of
boards of
conservators.

Boards of conservators are to meet from time to time for the despatch of business, subject to such regulations as each board may prescribe for itself in regard to the following matters (*n*):—

Regulation
of business.

(1) Election of chairman.

(*l*) 28 & 29 Vict. c. 121; 36 & 37 Vict. c. 71, s. 34.

(*m*) 36 & 37 Vict. c. 71, s. 30, sub-sect. 2.

(*n*) 28 & 29 Vict. c. 121, s. 22.

- (2) Summoning meetings, except that if any bye-law is to be made, at least a fortnight's notice of the meeting must be given (*n*).
- (3) Notice of meetings subject to the same exception.
- (4) Place of meetings.
- (5) Management of meetings.
- (6) Adjournment of meetings.
- (7) And, generally, with respect to the transaction and management of business, quorum of meetings, and other internal matters (*o*).

The following restrictions are, however, imposed by statute:—

Business prescribed by statute.

- (a) After the formation of a fishery district, the first meeting of the board appointed by quarter sessions must be held at the time and place appointed by the joint fishery committee (*o*).
- (b) After the annual election of representative members, the first meeting of the board in each year must be held at such place as the chairman of the preceding year may appoint (*p*).
- (c) At any time, if three members of the board require it, an extraordinary meeting must be held (*o*).
- (d) At any meeting of the board at which it is intended to propose any bye-law, a fort-

(*n*) 36 & 37 Vict. c. 71, s. 39.

(*o*) 28 & 29 Vict. c. 121, s. 22.

(*p*) 36 & 37 Vict. c. 71, s. 30, sub-sect. 2.

night's previous notice of the intention to propose the bye-law must be given (*r*).

- (*e*) The notice convening the meeting at which such bye-law is to be proposed must be issued at least a fortnight before the date of the meeting (*r*).
- (*f*) The quorum to be fixed by the board must not be less than three members (*s*).
- (*g*) All questions are to be decided by a majority of votes of the members voting on the question (*s*).
- (*h*) The chairman is entitled to vote on all questions, and in case of equality has a second or casting vote (*s*).

Boards may
appoint com-
mittees.

A board of conservators may also appoint committees of their board, and—

- (*a*) Fix a quorum for such committees, such quorum not being less than three.
- (*b*) Lay down rules for their guidance (*t*).

All questions before a committee are to be decided by a majority of the votes of members voting on that question. The chairman has a vote on all questions as well as a casting vote in cases of equality (*t*).

Evidence of
proceedings
at meetings.

As to evidence of the proceedings at the meetings of the board, the 26th section of the Act of 1865, which provided that any minute of the proceedings of the board signed by the chairman

(*r*) 36 & 37 Vict. c. 71, s. 39.
 (*s*) 28 & 29 Vict. c. 121, s. 22.
 (*t*) Sect. 23.

of the meeting, either at that meeting or at the next meeting at which he was present, has been repealed, as in practice it was found that if a chairman was not regular in his attendance the minutes were frequently left unsigned, and consequently could not be given in evidence. Now, by the Salmon Fishery Act, 1873, it is provided, that any minute of proceedings at a meeting of a board signed by the chairman of that meeting or by the chairman of the next are to be receivable in evidence in all legal proceedings without further proof, and, until the contrary is proved, every meeting of a board in respect of the proceedings of which minutes have been made, is to be deemed to be duly convened and held and all the members duly qualified (x).

This provision will be most important in the case of any dispute as to whether due notice has been given in regard to the making of bye-laws, for it throws upon the person alleging that the bye-law was not duly made the onus of proving that the meeting was not duly held, otherwise it would have lain with the board to prove this.

Powers and Duties of Boards of Conservators.

The powers and duties of boards of conservators are as follows:—

Powers of
board of con-
servators.

- (1) To make bye-laws for the execution of the Salmon Fishery Acts, 1861 to 1873, within

1. To make
bye-laws.

(x) 36 & 37 Vict. c. 71, s. 35.

their districts, upon the following matters (y):—

- (a) Alteration of annual close season ;
- (b) Alteration and extension of weekly close season ;
- (c) Size, length and description of nets ;
- (d) Size of the mesh of nets ;
- (e) Form of licences ;
- (f) The rate of licence duty ;
- (g) Marking boats and nets ;
- (h) Prohibition of netting at the mouth of rivers and the confluence of rivers ;
- (i) When a gaff may be used with a rod and line ;
- (j) When gratings are to be placed at mill races and artificial channels ;
- (k) Regulation during the annual and weekly close time of the use of nets for fish other than salmon ;
- (l) Prohibition of all netting in inland waters at night, except netting for eels.

To appoint
water bailiffs.

- (2) To appoint water bailiffs and other officers, and assign to them their salaries and duties (z).

2. To appoint
additional
constables.

- (3) To obtain under the provisions of the stat. 3 & 4 Vict. c. 88, s. 19, the services of additional constables (z).

4. To issue
licences.

- (4) To issue licences for fishing for salmon (z), and to vary the amount of licence duty (a).

(y) 86 & 87 Vict. c. 71, s. 39.

(z) 28 & 29 Vict. c. 121, s. 27. See this statute in the Appendix.

(a) 36 & 37 Vict. c. 71, s. 25.

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|---|--|
| (5) To levy additional licence duty for permanent improvements (<i>b</i>). | 5. To levy additional licence duty. |
| (6) To mortgage their licence duties to raise funds for carrying out the Salmon Fishery Acts, 1861 to 1873 (<i>c</i>). | 6. To mortgage licence duties. |
| (7) To purchase by agreement for the purpose of removal any dam, fishing weir, fishing mill-dam or fixed engine in the district that they may deem it expedient to remove (<i>d</i>). | 7. To purchase weirs by agreement. |
| (8) To acquire compulsorily under the powers of the Lands Clauses Consolidation Act, with the sanction of the secretary of state and parliament, any weir, dam, fishing weir, fishing mill-dam, fixed engine or artificial obstruction for the purpose of removal in whole or in part (<i>e</i>). | 8. To acquire weir compulsorily under the powers of the Lands Clauses Consolidation Act. |
| (9) To attach with the sanction of the secretary of state to any dam in existence on the 6th day of August, 1861, a fish-pass of such form and dimensions as the Home Office approves (<i>f</i>). | 9. To attach fish-pass to old dams. |
| (10) To purchase compulsorily, with the sanction of the secretary of state and of parliament, under the provisions of the Lands Clauses Consolidation Acts any portion of the bank adjoining any weir, dam, fishing mill-dam | 10. To purchase land for fish-passes. |

(*b*) 36 & 37 Vict. c. 71, s. 57.

(*c*) 28 & 29 Vict. c. 121, s. 28.

(*d*) Sect. 27.

(*e*) 36 & 37 Vict. c. 71, s. 49.

(*f*) 24 & 25 Vict. c. 109, s. 23, and 36 & 37 Vict. c. 71, s. 53.

- or obstruction for the purpose of making a fish-pass round such obstruction (*f*).
11. To place gratings. (11) To place gratings in any watercourse, mill-race, cut, leat or channel, for conveying water from a salmon river at the point of divergence and at the point of return (*g*).
12. To widen channels. (12) To widen any channel across which any grating may have been made, so as to compensate for the diminution of the flow of water caused by the grating (*h*).
13. To place gratings at the mouths of streams. (13) To place gratings at the mouths of streams so as to prevent salmon entering them (*i*).
14. To take legal proceedings for violation of the Salmon Fishery Acts. (14) To take legal proceedings against persons violating the provisions of the Salmon Fishery Acts, 1861 to 1873 (*j*).
15. To take legal proceedings for removing any weirs. (15) To take legal proceedings for removing such weirs or other fixed engines as they may be advised are illegal (*j*).
16. To apply moneys in any way they think best for the fisheries. (16) To apply any moneys in their hands in any way not illegal that they may consider most conducive to the improvement of the fisheries (*k*).
17. To appoint persons to inspect weirs. (17) To appoint any person or persons to enter upon any lands to inspect any weir, dam, fishing weir, fishing mill-dam, fixed engine, obstruction, mill-race or watercourse (*l*).
18. Generally to do such (18) Generally to execute such works, do such

(*f*) 36 & 37 Vict. c. 71, s. 50.

(*g*) Sect. 58.

(*h*) Sect. 59.

(*i*) Sect. 60.

(*j*) 28 & 29 Vict. c. 121, s. 27.

(*k*) 36 & 37 Vict. c. 71, s. 23.

(*l*) Sect. 56.

acts, incur such expenses, as they may deem expedient for the protection and improvement of the fisheries and stocking the waters within their district with salmon (*m*).

acts as they think expedient for the protection of the fisheries.

But none of these powers authorize a board to do anything that may injuriously affect any navigable river, canal or inland navigation (*m*).

Except in the case of a purchase of any weir, dam, fishing weir, fishing mill-dam or obstruction, from the member of any board of conservators, it is illegal for the board to pay any member any salary, fee or remuneration for his acting in any way as a member of or under the board. And in the case of a purchase of any dam or weir from a member, it is expressly provided that the member must not vote in respect of the payment of the compensation to himself (*n*).

Payments to members of a board.

Every year the board of conservators are to lay before either the court of quarter sessions that appoints the board if it is appointed by one county, or before the court of quarter sessions that the joint fishery committee fixed upon as the audit county if several counties appoint the board, an account of their receipts and disbursements in such form and with such particulars as such court may require. And the court of quarter sessions have power to disallow any item they may consider to be illegal (*o*).

Audit of accounts.

Such are the powers given to boards of conser-

(*m*) 28 & 29 Vict. c. 121, s. 27.

(*n*) Ibid.; 36 & 37 Vict. c. 71, s. 47.

(*o*) 28 & 29 Vict. c. 121, s. 29.

vators under the Salmon Fishery Acts, 1865 and 1873. The more important of them, those relating to bye-laws, water bailiffs, licences, weirs, fish-passes and gratings, are examined in detail in the subsequent chapters.

Statutes as to Boards of Conservators.

Justices at sessions to appoint conservators of rivers.

It shall be lawful for the justices of the peace assembled at any general or quarter sessions of the peace from time to time to appoint conservators or overseers for the preservation of salmon, and enforcing for that purpose the provisions of the Salmon Fishery Act, 1861, within the limits of the jurisdiction of such justices (*n*).

Cesser of powers of existing conservators.

After the appointment of a board of conservators in pursuance of the Salmon Fishery Act, 1865, in any district, the powers of all conservators or overseers for the preservation of salmon, appointed in pursuance of any other act of parliament, of charter or custom, and all powers of appointing the same, shall absolutely determine within the limits of the said district (*o*).

CONSTITUTION OF BOARDS OF CONSERVATORS.

Board of Conservators, and their Officers.

Constitution of board of conservators.

A board of conservators shall be a body corporate, having perpetual succession and a common seal, with power to make contracts, and to sue and be sued in a common name (*p*).

(i.)—Ex officio Members.

Ex-officio members of board of conservators.

In addition to the elected members of any board of conservators for any fishery district, every person shall be an ex officio member of such board who possesses either of the qualifications hereinafter mentioned; (that is to say,)

- (1) Is the owner or occupier of a fishery or fisheries in such fishery district, which is or are assessed to the rate for the relief of the poor on a gross estimated rental of thirty pounds a year; provided that in no case shall both the owner and occupier be entitled to act at the

(*n*) 24 & 25 Vict. c. 109, s. 83.

(*o*) 28 & 29 Vict. c. 121, s. 17.

(*p*) Sect. 21.

same time as ex officio members in respect of the same fishery or fisheries; and if there be more than one such owner or occupier of the same fishery or fisheries, then any one of such owners or occupiers;

- (2) Is the owner of lands in such fishery district of an annual value of not less than one hundred pounds, having a frontage of not less than one mile to any salmon river (in ascertaining such distance the frontage on both sides of the river to be counted), having the right to fish in the part of the river adjoining such frontage, and having paid licence duty for fishing for salmon within such district during the last preceding fishing season (g).

In all cases where the owner of any fisheries or lands possessing either of the aforesaid qualifications for ex officio members of the said board of conservators shall be a minor, idiot, lunatic, feme covert, or under any legal disability, or shall be a corporation, company or fishery association, one of the guardians or trustees of such minor, the committee of the estate of such idiot or lunatic, the husband of such feme covert, one of the members of such corporation, company or fishery association, or the attorney or agent of such guardian, trustee, committee, husband, corporation, company or fishery association (respectively) shall be entitled to act as an ex officio member of the board of conservators of the district within which such fisheries or lands are situate (r).

Provision for persons under disability.

Any person claiming to be entitled to act as an ex officio member of any board of conservators for any fishery district shall, previously to taking his seat at any such board, or taking any part in the proceedings thereof, or acting in any way as a member of such board, sign a declaration in such form as the board shall prescribe, setting forth the nature of the qualification in respect of which he claims to be entitled to act; and any person wilfully making any false declaration or acting before having made such declaration, having been required to do so, shall be liable to a penalty of not exceeding five pounds; for the first offence not less than 2*l.* 10*s.*, and not exceeding 5*l.* for the

Ex officio members to sign a declaration.

(g) 36 & 37 Vict. c. 71, s. 26.

(r) Sect. 27.

second offence, and if a licensee forfeiture of licence, and not less than 5*l.* for the third and forfeiture of licence (if a licensee); and every ex officio member having signed such declaration as aforesaid shall be entitled to act as a member of the board so long only as he continues to hold such qualification, and in case of any alteration being made in any fishery district, he shall be entitled to act only in that district where his qualification exists (*s*).

(ii).—*Appointed Members.*

Appointment of conservators to district within limits of one county.

Where any fishery district lies wholly within any one county, the justices of that county in quarter sessions assembled shall appoint a board of conservators for that district, and shall name the time and place at which the first meeting of any board so appointed is to be held (*t*).

Committee for fishery district in different counties.

Where a fishery district does not lie wholly within the limits of one county, the justices of any county, or the town council of any town being a county, within which any part of such district lies, assembled at any court of quarter sessions, or town council, may apply to the justices of every other county and town council in that district to appoint at their next court of quarter sessions or town council a fishery committee of three of their number, to form, with the fishery committee of the like number to be appointed at that sessions or town council by the county or town making the application, a joint fishery committee for the district (*u*).

Application for appointment of joint committee.

An application under this act by the justices of one county or the town council of any town which is a county, to the justices of another, in respect of the appointment of a joint fishery committee, shall be made by the clerk of the peace of the one county or the town clerk sending, within fourteen days after the holding of the sessions at which the application is resolved on, to the clerk of the peace of the other county or town clerk, by post, a letter requiring the justices of the other county or town council to appoint a fishery committee at their then next ensuing quarter sessions; and it shall be the duty of the clerk of the peace or town clerk making the application, and of the clerk of the peace of every county, and town clerk of every town which is a county, to whom such application is sent, to add to the notice required

(*s*) 36 & 37 Vict. c. 71, s. 28.

(*t*) 28 & 29 Vict. c. 121, s. 6.

(*u*) Sect. 7.

by law to be given of the holding of such last-mentioned sessions or town council a notice of the appointment proposed to be made of a fishery committee (v).

At the quarter sessions or town council mentioned in the application the justices of each county and town council shall appoint a fishery committee of three of their members; and any county or town which is a county neglecting to make such appointment shall be deemed to have concurred in any decision that may be arrived at by the fishery committees of the other counties or towns, or of such of them as may appoint a fishery committee (x).

Appointment
of fishery
committee.

The clerk of the peace of every county and town clerk of any town which is a county shall, as soon as possible after the appointment of a fishery committee by his county or town, give notice by post to the clerk of the peace or town clerk of every other county in the district, stating in such notice the names and addresses of the members composing the fishery committee of his county, and the clerk of the peace of the county or town clerk that made the application for such appointment shall, in the notice sent by him, name a time and place at which the joint fishery committee for such district is to meet (y).

Notice of ap-
pointment of
fishery com-
mittee.

The said joint fishery committee, on meeting at the time and place aforesaid, shall elect a chairman, and the chairman elected at the first meeting shall, if he is present at the time appointed for holding any other meeting, be chairman of that meeting; if he is not so present, the members present may choose any one of their number present to be chairman of such last-mentioned meeting (z).

Proceedings
of joint
fishery com-
mittee.

The said joint fishery committee shall proceed to appoint a board of conservators for such district, and shall determine the following matters:—

Meeting of
joint fishery
committee.

- (1) The number of conservators to be appointed as a board.
- (2) The number of members of the board to be appointed by each county in the district.
- (3) The names of the first members of the board, distinguish-

(v) 28 & 29 Vict. c. 121, s. 8.

(x) Sect. 9.

(y) Sect. 10.

(z) Sect. 11.

ing those who are to be considered as appointed by each county.

- (4) The time and place at which the first meeting of the said board is to be held.
- (5) The county by the quarter sessions of which the accounts of the board are to be audited, hereinafter referred to as the audit county.

Any member of a joint committee may be appointed member of the board (a).

A joint fishery committee may adjourn from time to time and from place to place, and one-third of the whole number of members appointed shall be a quorum.

Every question shall be decided by a majority of votes of the members voting on that question, and in the event of an equality of votes at any meeting the chairman shall have a second or casting vote.

The proceedings of a joint committee shall not be invalidated by reason of there being any vacancy or vacancies in their body (b).

Dissolution of
a joint fishery
committee.

When a joint committee have completed their dispositions for the formation of a board of conservators for a district, they shall give notice by post of such dispositions to the clerks of the peace of all the counties, and town clerks of all towns which are counties, in such district, and when such notice has been given the joint committee shall be dissolved (c).

Power to
secretary of
state to alter
the number
of conser-
vators ap-
pointed by
quarter ses-
sions.

It shall be lawful for the secretary of state, on the application of the justices for any county comprised, or partly comprised, in any fishery district, in quarter sessions assembled, one month's previous notice of such application having been given to the board of conservators affected by such alteration, to alter the number of conservators to be appointed at quarter sessions by the justices for all or any counties or county comprised, or partly comprised, in such district:

Provided always, that no such alteration shall be made, unless one month's previous notice has been given of the intention of the secretary of state to make such alteration, in some newspaper or newspapers circulating within the district; and previous to the expiration of such notice it shall be lawful for any person

(a) 28 & 29 Vict. c. 121, s. 12.
(b) Sect. 11.
(c) Sect. 13.

to represent to the secretary of state any objection which he may have to such alteration, and the secretary of state shall, after making such inquiry into such objection as he may think fit, either make such alteration, or not, as he may see fit, and shall cause his final determination to be published in the same newspaper or newspapers in which his intention to make such alteration was originally published (*d*).

The appointed members of a board of conservators shall hold office for one year, and be appointed annually at quarter sessions, and in the case of a board formed by a joint committee in the proportions fixed by that committee. Retiring members shall be eligible for re-appointment; and if at the time when any annual appointment ought to take place no such appointment is made, the existing conservators shall remain in office until their successors are appointed (*e*).

Tenure of office by conservators.

Notice of the first and of every subsequent appointment of a board of conservators, specifying the names and addresses of the persons appointed, shall, in the case of a board appointed by the justices of a single county, be advertised by the clerk of the peace of that county in some newspaper published or circulated in such county, and in the case of a board appointed by a joint committee be advertised by the clerk of the peace of every county and the town clerk of every town which is a county in the district in some newspaper published or circulated in that county or town (*f*).

Notice of appointment of conservators.

In any fishery district, where any members of a board of conservators are appointed by the justices in quarter sessions of a single county, or of one or more counties or towns which are counties, a notice of the appointment of the members of such board appointed by such county, or by each of such counties or towns, with the name and address of each member, shall be sent to the clerk or other officer of the board of conservators by the clerk of the peace of such county, or of each of such counties, or the town clerk of such town or each of such towns, within fourteen days from the date of such appointment; and any clerk of the peace or town clerk refusing or neglecting to send such

Clerk of the peace to send notice of appointment.

(*d*) 36 & 37 Vict. c. 71, s. 9.

(*e*) 28 & 29 Vict. c. 121, s. 15.

(*f*) Sect. 16.

notice shall for every such refusal or neglect be liable to a penalty of not exceeding two pounds (f);—for the first offence of not less than one pound, and not exceeding two pounds for the second offence, and on a third or any subsequent offence of not less than two pounds.

Appointment
of conserva-
tors for river
Esk.

For the purposes of the Salmon Fishery Acts, 1861 to 1873, the commissioners of supply in Scotland shall have all the privileges and duties of the justices in quarter sessions in England for the election of boards of conservators for the river Esk (g).

(iii.)—*Representative Members.*

Additional
members of
boards of con-
servators.

In addition to the members of any board of conservators appointed under the provisions of the Salmon Fishery Act, 1865, in all fishery districts in any part of which there are any public or common rights of fishing, and where such rights are exercised by fishermen duly licensed to fish for salmon (otherwise than with rod and line), all persons who have taken out licences to fish in such public or common waters or both (other than licences for the use of a rod and line), during the last preceding fishing season, shall be entitled to elect such number of additional members to represent them at the board of conservators for such district as are hereinafter mentioned; (that is to say,)

If the aggregate amount of licence duty paid for fishing in public or common waters or both (other than licences for the use of a rod and line) does not exceed the sum of fifty pounds, one member:

And if the aggregate amount of licence duty exceed that sum, one additional member for every additional fifty pounds or part of fifty pounds (h).

Rules as to
the election
of additional
members.

The election of such additional members shall be held in accordance with the following provisions; (that is to say,)

The board of conservators shall hold a meeting after the commencement of the annual close season in each year; at such meeting the clerk of the board shall produce a statement of the licence duty paid in the district during that year, and the board shall thereupon ascertain and declare the amount of licence duty paid in respect of licences for fishing otherwise than with rod and line in public or common waters or

(f) 36 & 37 Vict. c. 71, s. 10.
(g) Sect. 12.
(h) Sect. 29.

both, and the number of representative members for the ensuing year (i):

Within a reasonable time before the first meeting of any board of conservators in every year, the returning officer shall sign and publish a notice specifying the number of members to be elected and shall send a copy of such notice by post (j), with a copy of the following paper:—

Nomination Paper.

—— Fishery District.

I, the undersigned —— of ——, do hereby nominate [A. B. of ——, in the county of ——, esquire, C. D. of ——, in the county of ——, fisherman], for election as additional members of the board of conservators of the —— Fishery District under the provisions of the Salmon Fishery Act, 1873.

(Signed) ——.

To ——,

Returning officer for such election.

Dated this —— day of ——, 187— (k).

to each person qualified to vote, as having paid licence duty for fishing in public or common waters during the last preceding fishing season, who shall be either resident within, or the owner of land within, or within ten miles of the boundary of the fishery district in respect of which such licence was issued (j):

The notice shall specify the last day on which the nomination papers are to be sent to the returning officer (l):

Any person entitled to vote may fill up such nomination paper with his own name, or with the name or names of any other person or persons (not exceeding the number of persons to be elected), and send such nomination paper by post to the returning officer on or before such specified day. If the number of persons nominated shall be the same or less than the number of persons to be elected, such persons shall be deemed to be duly elected for one year, or until the next annual election, and shall be certified as elected by the returning officer under his hand (m):

(i) 36 & 37 Vict. c. 71, s. 30, sub-sect. 1.

(j) Sect. 30, sub-sect. 3.

(k) 1st Schedule.

(l) Sect. 30, sub-sect. 4.

(m) Sect. 30, sub-sect. 5.

LAW OF SALMON FISHERIES.

If the number nominated exceed the number to be elected, the returning officer shall send by post a copy of the following voting paper (m)—

Voting Paper.

——— Fishery District.

Number of Voting Paper.	Name and Address of Voter.	Number of Votes.

Directions to the Voter.

The voter must write his initials against the name of every person for whom he votes, and insert the number of votes he intends to give to each candidate voted for, and must sign this paper in the presence of, and it must be attested by, a witness.

If the voter cannot write he must affix his mark, but such mark must be attested by a witness, and such witness must write the initials of the voter against the name of every person for whom the voter intends to vote, and the number of votes given to each such person.

Initials of Witness.	Initials of the Voter against the Names of the Persons for whom he intends to vote.	Names of the Persons nominated.	Residence of the Persons nominated.	Quality or Calling of the Persons nominated.	Number of Votes given to each Candidate voted for.

I vote for the persons in the above list against whose name my initials are placed in the proportion above mentioned.

(Signed) ———.
Mark of ———.

Dated the ——— day of ———, 187—.
Name and address of witness (n).

(m) 36 & 37 Vict. c. 71, s. 30, sub-sect. 6.
(n) 2nd Schedule.

containing in alphabetical order the names of all persons nominated, to each person entitled to vote, and shall specify a day, not less than five days nor more than ten days from the date of sending such voting paper, upon which such voting paper is to be returned to him (o):

Every voter shall, in the presence of a witness, write his initials or make his mark against the name or names of the person or persons (not exceeding the number to be elected) for whom he intends to vote, and shall insert the number of votes he intends to give to each person, and shall strike out the name or names of every other person or persons, and sign the voting paper with his name and address. In case the voter cannot write, such witness shall attest and write his own initials against the name of every candidate for whom the voter intends to vote, and against the mark of such voter, and shall fill up the number of votes given to each candidate. In every case such witness shall subscribe his own name and address to such voting paper (p):

Each voter shall be entitled to vote according to the following scale; (that is to say,) Scale of votes.

If the licence duty paid by him shall exceed one pound and not exceed two pounds, one vote for each member to be elected:

If the licence duty shall exceed two pounds but not exceed five pounds, two votes for every such member:

If the licence duty shall exceed five pounds and not exceed ten pounds, three votes for every such member:

If the licence duty shall exceed ten pounds and not exceed twenty pounds, four votes for every such member:

If the licence duty shall exceed twenty pounds, five votes for every such member (q).

A voter may give all such votes to any one of the persons nominated, or may distribute them amongst such of the persons nominated, not exceeding the number to be elected, as he shall think fit (r):

(o) 36 & 37 Vict. c. 71, s. 30, sub-sect. 6.

(p) Sect. 30, sub-sect. 7.

(q) Sect. 30, sub-sect. 8.

(r) Sect. 30, sub sect. 9.

The voter shall send the voting paper by post to the returning officer, duly filled up and attested as aforesaid, on or before the day mentioned therein (s).

Penalty for
personating
voters, &c.

At any such election, if any person or persons wilfully fabricate in whole or in part, or alter, deface, destroy, abstract, or purloin any voting paper, or personate any person entitled to vote, or falsely assume to act in the name or on behalf of any person so entitled to vote or attest the execution of any voting paper, such person or persons shall be liable on conviction thereof to a penalty not exceeding 20*l.* for the first offence; not less than 2*l.* 10*s.* nor exceeding 20*l.* for the second and forfeiture of licence if a licensee; not less than 5*l.* nor exceeding 20*l.* for the third, or to be imprisoned for any time not exceeding three months, with or without hard labour (t).

In case any person entitled to vote shall not have received a voting paper, he shall be entitled, on his personal application to the returning officer, before the day fixed for the return of the voting papers, to receive and fill in a voting paper in manner aforesaid (u):

The returning officer, within four days after the day fixed for the return to him of the voting papers, shall inquire into the validity of the votes given, and cast up and ascertain the number of valid votes given to each person nominated, and the persons in accordance with the number to be elected who shall have obtained the greatest number of valid votes shall be deemed to be elected, and the returning officer shall certify them to be so under his hand (v):

If upon casting up the votes the returning officer shall find that an equal number of votes has been given for two or more persons, one or more of whom only is or are entitled to be elected, he shall, in the presence of two or more witnesses, determine by lot which of such persons is or are elected, and the person or persons so determined shall be deemed to be for all intents and purposes duly elected member or members

(s) 36 & 37 Vict. c. 71, s. 30, sub-sect. 10.

(t) Sect. 33.

(u) Sect. 30, sub-sect. 11.

(v) Sect. 30, sub-sect. 12.

of the board as if he or they had obtained a majority of the votes at such election (w):

The returning officer shall, immediately after ascertaining the persons elected, send by post to each person so elected a notice of his election, and shall publish the names of the persons so elected in such newspaper or newspapers circulating within the district as the board shall direct (x):

The returning officer shall make out a list containing the names of all persons nominated, together with the number of valid votes (in case of a contest) given to each person nominated, and shall sign and certify the same, and shall deliver such list, together with the nomination and voting papers, to the board of conservators at their next meeting; and such list shall be open to the inspection of all licence payers without fee or reward (y).

The returning officer shall, at the first meeting of the board of conservators after any such election as aforesaid, lay before the board an account of the expenses incurred by him in conducting such election. And the board of conservators shall thereupon cause the same to be audited, and may disallow any item they consider to be excessive or illegal; and shall forthwith pay the amount found due to the returning officer, and in default of payment the returning officer shall be entitled to recover from the board of conservators in a summary manner whatever shall be found due to him after such accounts have been audited (z).

Returning officer to recover expenses.

At any such election, if the returning officer wilfully neglects or refuses to comply with any of the provisions of this act, he shall be liable for every such offence to a penalty not exceeding 5*l.* (a) for the first offence; not less than 2*l.* 10*s.*, and not exceeding 5*l.* for the second, and not less than 5*l.* for the third.

Penalty on returning officer for wilful neglect of provisions as to elections.

Any casual vacancy occurring among either the appointed or the representative members of a board of conservators, whether by death, resignation, or otherwise, may be filled

Casual vacancies.

(w) 36 & 37 Vict. c. 71, s. 30, sub-sect. 15.

(x) Sect. 80, sub-sect. 14.

(y) Sect. 80, sub-sect. 13.

(z) Sect. 31.

(a) Sect. 82.

up by the board; but the member chosen to fill such vacancy shall hold his office for such time only as the member vacating would have held the same if no vacancy had occurred (*b*).

Continuance
of old boards,
ratification of
their proceed-
ings.

Nothing in this act contained shall be held to invalidate any thing done or suffered to be done before the passing thereof, by any board of conservators formed under the powers and authority of the Salmon Fishery Act, 1865, and all the proceedings and acts of such boards shall be as valid and effectual as if this act had not been passed. And the proceedings of all boards of conservators after the passing of this act shall accordingly be subject and without prejudice to everything so done or suffered to be done, and to all rights, liabilities, claims and demands, both present and future, which would if this act had not been passed be incident to and consequent on any or every thing so done or suffered to be done, and the proceedings, and all proceedings of boards of conservators under this act, shall be deemed a continuation of and form a part of the proceedings of boards of conservators constituted under the Salmon Fishery Act, 1865. And the boards of conservators appointed under this act shall to all intents and purposes represent and be deemed a continuation of the boards of conservators appointed under the provisions of the Salmon Fishery Act, 1865. And no act or proceeding of any board of conservators appointed under the provisions of the Salmon Fishery Act, 1865, or of this act, shall be questioned on account of any vacancy or vacancies in their body, and no defect in the qualification or appointment of any person or persons acting as member or members of any board of conservators shall be deemed to vitiate or affect any proceedings of such board in which he or they may have taken part (*c*).

Rules as to
objections
and evidence.

No objection shall be made at any trial or in any legal proceeding to the validity of any orders or proceedings relating to the appointment of any board of conservators in any district after the expiration of three calendar months from the date of the advertisement of such appointment in the newspaper; and

(*b*) 28 & 29 Vict. c. 121, s. 15; 36 & 37 Vict. c. 71, s. 30, sub-sect. 16.

(*c*) 36 & 37 Vict. c. 71, s. 34; 28 & 29 Vict. c. 121, s. 25.

a copy of the newspaper containing the advertisement of the appointment of a board of conservators shall be receivable in all courts of justice and in all legal proceedings as evidence of such appointment having been made (*d*).

A board of conservators shall meet for the despatch of business, and shall from time to time make such regulations with respect to the election of a chairman of their meetings, the summoning, notice, place, management, and adjournment of their meetings, and generally with respect to the transaction and management of business, including the quorum at meetings, as they think fit, subject to the following conditions :—

Proceedings
of board.

- (a) The first meeting after the formation of the district shall be held at the time and place fixed by the joint fishery committee (*e*):
- (b) The first meeting of a new board of conservators, on which there are any representative members, shall be held annually upon such day after the day fixed for the election of such additional members in each year as the chairman of the board for the preceding year shall appoint (*f*):
- (c) An extraordinary meeting may be summoned at any time, on the requisition of three members of the board (*e*):
- (d) No bye-law shall be made by any board of conservators unless notice of an intention to propose the same shall have been given in the notice convening the meeting of the conservators at which it is intended to propose such bye-law, which notice shall be issued one fortnight at least before the date of such meeting (*g*).
- (e) The quorum to be fixed by the board shall consist of not less than three members (*e*):
- (f) Every question shall be decided by a majority of votes of the members voting on that question; and in the event of an equality of votes the chairman for the time being shall have a second or casting vote (*e*).

(*d*) 28 & 29 Vict. c. 121, s. 18.

(*e*) Sect. 22.

(*f*) 36 & 37 Vict. c. 71, s. 30, sub-sect. 2.

(*g*) Sect. 39.

Appointment
of com-
mittees.

A board of conservators may appoint committees of their members, may fix a quorum for each committee, and may lay down rules for its guidance. Every question before a committee shall be decided by a majority of votes of the members voting on that question, and in the event of an equality of votes the chairman for the time being shall have a second or casting vote (*g*).

Evidence of
proceedings
at meetings.

Any minute made of proceedings at a meeting of a board of conservators, signed by the chairman of such meeting, or by the chairman of the next meeting of the board, shall be receivable in evidence in all legal proceedings without further proof; and until the contrary is proved every meeting of the board in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified (*h*).

Enumeration
of powers of
board of con-
servators.

A board of conservators shall have power within their district to do the following things, or such of them as they may in their discretion think expedient; that is to say (*i*),—

1. To make
bye-laws.

(1) Make bye-laws for the better execution of the Salmon Fishery Acts, 1861 to 1873, and for the better protection, preservation and improvement of the salmon fisheries within their district, and alter the same from time to time for all or any of the following purposes; (that is to say,) (*h*)

- (i.) To alter the commencement and termination of the annual close season:
- (ii.) To alter the commencement and termination of the weekly close season: provided that such weekly close term shall in no case exceed forty-eight hours:
- (iii.) To determine the length, size and description of nets, and the manner of using the same (not being fixed engines) for taking salmon:
- (iv.) To determine the minimum size of the mesh of nets for catching salmon that shall be lawfully used within the district:
- (v.) To determine the form of licence and the manner in which licences shall be issued:

(*g*) 28 & 29 Vict. c. 121, s. 29.

(*h*) 36 & 37 Vict. c. 71, s. 35.

(*i*) 28 & 29 Vict. c. 121, s. 27.

(*h*) 36 & 37 Vict. c. 71, s. 39.

- (vi.) To vary the rate of licence duty in different parts of the district:
 - (vii.) To determine what marks shall be attached to licensed nets, or to boats used in fishing:
 - (viii.) To prohibit the use of nets within a certain distance of the mouth of any river, and of the point of confluence of rivers:
 - (ix.) To determine the time during which it shall be lawful to use a gaff in connexion with a rod and line:
 - (x.) To determine when gratings shall be placed during certain times of the year across the head and tail race of mills and across any artificial channel:
 - (xi.) To regulate during the annual and weekly close seasons the use within any river of nets for fish other than salmon, when such use at such times is prejudicial to the salmon fisheries:
 - (xii.) To prohibit the use at night in any inland water of any net, except a landing net or a net for taking eels (*l*).
- (2) From time to time, by writing under the hand of the acting chairman for the time being of the board, to appoint a sufficient number of water bailiffs and other officers, to assign to them their salaries and duties, and to remove any water bailiff or officer so appointed: provided always, that nothing herein contained shall prevent the said board of conservators from obtaining the services of additional constables under the act third and fourth Victoria, chapter eighty-eight, section nineteen, for the purpose of carrying out the provisions of the Salmon Fishery Acts; such constables, when appointed, to have all the powers and privileges of water bailiffs, and to be paid for their services by the said board (*m*).
- (3) To issue such licences for fishing as are provided by the Salmon Fishery Acts (*n*).
- (4) The board of conservators may, with the consent and approval of the secretary of state, from time to time vary the licence duties leviable within their district, and vary the licence duties leviable on similar instruments in different parts of the district (*o*).

2. To appoint water bailiffs.

3. To issue licences.

4. To vary licence duties with the approval of the secretary of state.

(*l*) 36 & 37 Vict. c. 71, s. 39.
 (*m*) 28 & 29 Vict. c. 121, s. 27.
 (*n*) 36 & 37 Vict. c. 71, s. 25.

5. To levy additional licence duty for permanent improvement.

(5) In addition to the licence duties authorized to be levied in a fishery district, the board of conservators may from time to time, with the sanction of the secretary of state, for the purpose of defraying the charges of any improvements made or about to be made for the purpose of facilitating the passage of salmon, levy additional licence duties throughout the district, not exceeding in any one year twenty-five per cent. of the sum paid by each person respectively (*e*).

6. To mortgage licence duties.

(6) A board of conservators may, for the purpose of defraying any costs, charges and expenses incurred or to be incurred by them under the Salmon Fishery Acts, 1861 to 1878, with the consent of one of her Majesty's principal secretaries of state, borrow and take up, at interest on the credit of the licence duties authorized to be imposed by them, or of any other property belonging to them, any sums of money necessary for defraying such costs, charges and expenses (*p*).

7. To purchase weirs by agreement.

(7) To purchase by agreement, for the purpose only of removal, dams, fishing weirs, fishing mill-dams, or fixed engines, they may deem it expedient to remove for the benefit of the fisheries in their district (*q*).

8. To purchase weirs, &c. compulsorily.

(8) To present a petition to the secretary of state praying that the board may, with reference to any weir, dam, fishing weir, fishing mill-dam, fixed engine or artificial obstruction, and the premises used in connection therewith, be allowed to put in force the powers of the Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement (*r*).

9. To attach fish-passes.

(9) Any board of conservators, with the written consent of the Home Office, may attach to every dam existing on the 6th day of August, 1861, a fish-pass of such form and dimensions as the Home Office may approve (*s*).

10. To purchase bank for making fish-passes.

(10) Any board of conservators may present a petition to the secretary of state, praying to be allowed to put in force the powers of the Lands Clauses Consolidation Acts with respect to

(*e*) 36 & 37 Vict. c. 71, s. 57.

(*p*) 28 & 29 Vict. c. 121, s. 28.

(*q*) Sect. 27.

(*r*) 36 & 37 Vict. c. 71, s. 49.

(*s*) 24 & 25 Vict. c. 109, s. 23; 36 & 37 Vict. c. 71, s. 53.

so much of the bank adjoining any dam as may be necessary for making a fish-pass (*f*).

(11) Any board of conservators, after due notice to the owner or occupier of any mill or other premises, at the expense of such board, during such period as may be prescribed in each year, may order to be placed in any watercourse, mill-race, cut, leat, or other channel for conveying water for any purpose from any river frequented by salmon at or near the point of divergence from and return to such river, or either of them, or in any other suitable place, a grating of such form and dimensions as they shall determine (*u*).

11. To place gratings in water-courses.

(12) In all cases of construction of gratings, in such cases as the secretary of state may deem expedient, any watercourse, mill-race, or channel, may be widened at the cost of the board, so as to compensate for the diminution of the flow of water caused by the erection of any grating (*x*).

12. To widen channels.

(13) A board of conservators, with the consent of the secretary of state, may adopt such means as he shall approve for preventing the ingress of salmon into streams in which they or their spawning beds are, from the nature of the channel, liable to be destroyed (*y*).

13. To place gratings at mouths of streams.

(14) To take legal proceedings against persons violating the provisions of the Salmon Fishery Acts, 1861, 1873, or either of them, or for removing such weirs or other fixed engines as they may be advised are illegal (*z*).

14. To take legal proceedings for offences against the Salmon Fishery Acts.

(15) The conservators of a district may expend any monies in their hands in any manner not being illegal they may think most conducive to the improvement of the salmon fisheries within their district (*a*).

15. To apply money produced by licences.

(16) Any person or persons, duly appointed in writing by a board of conservators, may at all times enter upon any lands to inspect any weir, dam, fishing weir, fishing mill-dam, fixed engine, obstruction, mill-race, or watercourse, and any person either refusing to admit or obstructing them or any of them in entering

16. To enter and inspect weirs, dams, &c.

(*f*) 36 & 37 Vict. c. 71, s. 50.

(*u*) Sect. 58.

(*x*) Sect. 59.

(*y*) Sect. 60.

(*z*) 28 & 29 Vict. c. 121, s. 27.

(*a*) 36 & 37 Vict. c. 71, s. 23.

any such place or places shall for every such offence be liable to a penalty of not exceeding five pounds (*b*).

17. Generally to do such works as may be necessary for protection of fisheries.

(17) Generally to execute such works, do such acts, and incur such expenses as they may deem expedient to be executed, done, or incurred for the protection and improvement of the salmon fisheries within their district, the increase of salmon, and the stocking of the waters in the district therewith (*c*).

Provided that these powers shall not authorize anything to be done which may injuriously affect any navigable river, canal, or inland navigation (*c*).

Payment to member.

Provided that it shall not be lawful for a board of conservators to pay to any member of the board any salary, fees, or other remuneration for his acting in any way as a member of or under the board (*c*); except in case of any member of the board of conservators of the district being the owner of any weir, dam, fishing mill-dam, or obstruction, nothing in the Salmon Fishery Acts, 1861 to 1873, shall prevent the board paying to such member any compensation in respect of the same, provided that such member does not vote in respect of the payment of any such compensation to himself (*d*).

Audit of accounts of board.

An account of the receipts and disbursements of every board of conservators, in such form and with such particulars as may be required by the court of quarter sessions that appoints the board, or in the case of a joint board by the court of quarter sessions of the audit county, shall be laid annually before such courts of quarter sessions as aforesaid, and the justices assembled at such courts may disallow any item that they consider to be illegal (*e*).

(*b*) 36 & 37 Vict. c. 71, s. 56.

(*c*) 28 & 29 Vict. c. 121, s. 27.

(*d*) 36 & 37 Vict. c. 71, s. 47.

(*e*) 28 & 29 Vict. c. 121, s. 29.

CHAPTER IV.

BYE-LAWS.

PERHAPS the most important part of the Salmon Fishery Act, 1873, is the power given to boards of conservators to make bye-laws for the better execution of the Salmon Fishery Acts, 1861 to 1873, within their district. Before 1861 various local acts regulated the fisheries in different rivers, but the Salmon Fishery Act, 1861, repealed all these, so far as they related to salmon, and laid down the principle of one fixed law for every river in England and Wales. Although the principle was sound in theory, yet in practice it has been found absolutely necessary that it should be relaxed in some degree. Each river has its own local peculiarities of detail, and these can never be dealt with by general legislation; what is almost vital for one river may prove ruinous for another; and hence for a long time past boards of conservators have been asking for power to adapt the law to the circumstances of their district. This power has at last been granted, and each board can now, within the limits prescribed by the act, modify the general law so as to suit the peculiarities of its district.

Great care will be required in framing the bye-laws, so as, on the one hand, to draw them to include as much as possible, while, on the other, to

avoid the danger of their being illegal by including too much. The courts always construe bye-laws most strictly against the persons making them; and as the mode of making, that is, drawing and framing, the bye-laws rests with the conservators alone,—the secretary of state having no power to alter, only to approve or disapprove the bye-laws when made,—boards of conservators will have to run a double risk of having the bye-laws disallowed: (1) as not complying with the secretary of state's ideas of legality; and, (2) if they comply with that, of not complying with the ideas of the Court of Queen's Bench as to legality. It need hardly be stated that the opinions of the secretary of state and the Court of Queen's Bench are not necessarily coincident; instances are not wanting of bye-laws being allowed by the secretary of state and subsequently held illegal by the Court of Queen's Bench.

General rules
as to bye-
laws.

Before stating how the bye-laws of boards of conservators are to be made, it will be as well to give one or two general rules as to making bye-laws:

1. Must be
within the
special
powers of the
act.

- (1) The bye-laws can only be made under one of the twelve heads authorized by the Salmon Fishery Act, 1873, for when a power is given by statute to make bye-laws for special objects, the body to whom such power is given have no general power to make bye-laws to carry out the act (*a*); in other words, they must be *intra vires*;

(*a*) *Reg. v. Wood*, 5 E. & B. 49; S. C. nom. *Reg. v. Rose*, 24 L. J. (N. S.), M. C. 130; 1 Jur., N. S. 802.

- (2) A bye-law must be reasonable, otherwise it will be bad, and a bye-law may be quite within the powers of the body making it, but unreasonable and therefore bad. In the case of *Elwood v. Bullock* (b), a bye-law of a borough provided that no person should erect any booth or place any caravan for the purpose of any show or public entertainment in any public place within the borough without the licence of the mayor; and any licence given at any other time than fair time should be revoked by the mayor, if three householders residing within one hundred yards of the place upon which the caravan was licensed to be set up memorialized the mayor to revoke it. This was held to be an unreasonable bye-law and therefore bad;
- (3) A bye-law must be consistent with the statute authorizing it. In the case of *Dearden v. Townsend* (c): Townsend, a passenger on the Lancashire and Yorkshire Railway, travelled upon the railway with a return ticket to a station beyond that from which the return ticket was taken; on leaving the train, he gave his return ticket and the full local fare between the station for which his ticket was available and the one at which he left the train. The company

2. Must be reasonable.

3. It must be consistent with the act authorizing it.

(b) 18 L. J. (N. S.) M. C. 330.
(c) L. R., 1 Q. B. 10.

had made a bye-law to the effect, that no person was allowed to travel on the railway without having obtained a ticket, which he must show when required and give up on leaving the company's premises, and in default either pay the full fare from the place at which the train started or forfeit a sum not exceeding forty shillings. The company refused to take the ticket and the local fare, and demanded the full fare. This Townsend refused to pay, and the company thereupon summoned him for a breach of the bye-law. The Court of Queen's Bench held, that no offence had been committed; that the bye-law only applied to a person wilfully refusing to give up his ticket, not to a person travelling without a ticket and having no intention of defrauding; for if otherwise, it would have been an illegal bye-law, as the Railways Clauses Consolidation Act(c), under which the bye-law was made, had provided for the case of a passenger travelling without a ticket, and the bye-law would have been inconsistent with the act.

4. Must not
be too
general.

- (4) A bye-law must not include more than the act authorizing it allows. A town council were authorized by statute to make bye-laws for the prevention of nuisances; the council made a bye-law imposing a fine on every person who should keep swine within

(c) 8 Vict. c. 20.

their borough from the 1st of May to the 31st October in any year. This bye-law was held to be bad, as it prohibited the keeping of swine generally, not merely the keeping of them so as to be a nuisance(*d*). The observations of the Lord Chief Baron Pollock with regard to bye-laws should be remembered by boards making them. He says, "Persons empowered to make bye-laws have no right to invest themselves with powers which the law will not sanction. The way in which boards are inclined to use these powers make it very desirable that they should have as little power as possible." And Mr. Baron Bramwell added, "It is about the same as a policeman, who thinks he is not entitled to a staff unless he breaks somebody's head with it"(*e*).

- (5) If a bye-law is bad, the confirmation by the secretary of state will not make it good. This was decided in the case of *Reg. v. Wood*(*f*): there an information was laid for an infringement of a bye-law, and it was objected that the bye-law was ultra vires; the magistrate held that he could not go into that as the bye-law had been allowed by the secretary of state, and convicted the person for a breach of it. On appeal the

5. Confirmation by secretary of state does not make a bye-law good.

(*d*) *Everett v. Grapes*, 3 L. T. (N. S.) 669.

(*e*) 7 L. T. (N. S.) 384.

(*f*) 5 E. & B. 49.

Court of Queen's Bench quashed the conviction on the ground that as the bye-law was bad the magistrate had no jurisdiction.

Special conditions necessary for the validity of bye-laws under the Salmon Fishery Act.

These general requisites apply to all bye-laws made by local bodies, and, in addition to them, bye-laws made under the Salmon Fishery Act must also satisfy the following conditions:—

- (1) They must not be contrary to the Salmon Fishery Acts, 1861 and 1865;
- (2) They must not impose a greater penalty than 5*l.*;
- (3) They must be framed so as to allow the justice to impose a part only of the penalty (*h*);
- (4) They must satisfy all the conditions prescribed by the Salmon Fishery Act, 1873, in regard to the making and confirmation of bye-laws.

Mode of making bye-laws.

The mode by which bye-laws are to be made are as follows:—

Notice of proposed bye-law.

- (1) A notice of the intention to propose the bye-law (that is, a notice of the exact bye-law to be proposed, not a general notice that a bye-law will be proposed) must be given to the clerk of the board, or to the person whose duty it is to call the meeting of the board, at least a fortnight before the date of the meeting (*h*);
- (2) The notice convening the meeting at which the bye-law is to be proposed must be issued at least a fortnight before the date of the meeting (*h*);—It will be observed that the

(*h*) 36 & 37 Vict. c. 71, s. 39.

act does not say the members are to have a fortnight's notice, only that the notice must be issued a fortnight before the meeting;

- (3) If the board determine to make the proposed bye-law at their meeting, then—
- (4) The bye-law must be written out, framed in accordance with the above rules, and sealed with the common seal of the board (*i*); Provisions for inspection of proposed bye-law.
- (5) An advertisement of the intention of the board to apply for a confirmation of the proposed bye-law by the secretary of state must be inserted once in each week for a month in one or more newspapers circulating in the district (*k*);
- (6) A copy of the proposed bye-law must be kept during that time at the office of the board, or at such place as the chairman of the board shall appoint (*k*);
- (7) Such copy is to be open to gratuitous public inspection at all reasonable times (*k*);
- (8) Any person is entitled to a copy of the proposed bye-law on payment of one penny (*k*);
- (9) At the expiration of one month application is to be made to the secretary of state to confirm the bye-law (*k*); Confirmation of bye-laws.
- (10) The secretary of state may, if he chooses, in all cases direct an inquiry into the advisability of the proposed bye-law (*l*); Inquiry into advisability of bye-laws.

(*i*) 36 & 37 Vict. c. 71, s. 39.

(*k*) Sect. 42.

(*l*) Sect. 41.

Inquiry into
the advisa-
bility of bye-
laws.

- (11) If the bye-law relates to the annual close season, the weekly close season, the length, size and description of nets and the manner of using them, the size of the mesh of nets or the prohibition of netting at particular places, any owner or occupier of a fishery, or any licensee who would be affected by such bye-law, may give a notice in writing to the secretary of state of his objection to such bye-law (*n*);
- (12) On the receipt of such notice of objection the secretary of state may at once disallow such bye-law (*n*); or,
- (13) If the owner, occupier or licensee will give such security for the payment of the costs of the inquiry itself and the subsequent advertisement of the notice to grant the bye-law as the secretary of state shall approve, it is compulsory upon him to order an inquiry to be held (*n*);
- (14) The inquiry is to be held, after giving such notices, at such time and place and before such persons or person as the secretary of state shall appoint (*n*);
- (15) At such inquiry all persons interested have a right to be heard (*n*);
- (16) After the inquiry the secretary of state may either disallow or allow the bye-law (*n*);
- (17) If he allows the bye-law, one month's notice of his intention to do so must be advertised

in some newspaper or newspapers circulating in the district affected by the bye-law (*o*);

- (18) If the inquiry has been directed by the secretary of state, or there has been no inquiry, then he pays for the advertisement; if there has been a compulsory inquiry, then the person who applied for the inquiry pays for it (*o*);
- (19) As soon as the bye-law is confirmed it is to be printed (*p*);
- (20) A copy is to be delivered to every licensee free of charge. It will be seen that the act does not order the clerk to send copies to licensees, merely to deliver them on application (*p*);
- (21) Copies of the bye-laws are to be posted up, and renewed from time to time, in conspicuous places in the district (*p*);
- (22) Copies of the bye-laws are to be open for gratuitous inspection at the office of the board at all reasonable times (*p*).

Bye-laws to be printed and published.

It will be seen that there is no provision for the sale of the bye-laws when confirmed by the secretary of state, copies are only required to be sold before confirmation for a penny. But while every one is entitled to see a copy of the bye-laws, and every licensee on application to have a copy given gratuitously, there is nothing to prevent the board selling copies of the bye-laws to the public when

Sale of copies.

(*o*) 36 & 37 Vict. c. 71, s. 41.
 (*p*) Sect. 43.

confirmed at such price as they may fix, and there is no power in the act by which the public would be entitled to make copies. They can read the bye-laws gratis, but if they want anything more it rests with the board to allow it or not, either gratuitously or upon payment.

Penalty on clerk.

If the clerk wilfully refuses to deliver a copy of the bye-law to a licensee or to allow the same to be inspected by the public, he is liable for the first offence to a penalty not exceeding 5*l.*, on a second to a penalty not less than 2*l.* 10*s.* nor more than 5*l.*, on a third or subsequent offence to not less than 5*l.*, and, if a licensee, on a second conviction, he forfeits his licence (*q*).

Subjects of bye-laws.

Bye-laws may be made upon the following subjects:—

1. Annual close season.

(1) To alter the commencement or termination of the annual close season (*r*).

For fishing with nets or any other engines, except rod and line, the annual close time may be varied as the board pleases, except that it must begin not later than the 1st of November and must be at least 154 days; that is, if it begins on the 1st November it must last, except in leap year, to the 2nd April. There is, however, nothing to prevent the board fixing the close time to begin on the 1st January or any day before the 1st November if they like, provided that in each year they have 154 days.

Variable close time.

A different close time may be made in different

(*q*) 28 & 29 Vict. c. 121, ss. 56, 57; 36 & 37 Vict. c. 71, ss. 18, 43.

(*r*) 36 & 37 Vict. c. 71, s. 39.

parts of the district ; thus the board could make a close time for the estuary beginning, say, on the 1st August, on the middle waters on the 1st October, on the upper on the 1st November, the only limitation is that in every part of the district there must be at least 154 days in the year when salmon may not be fished for, and in no part of the district can those 154 days *begin* after the 1st November.

For fishing with rods the same rule holds, with Rod fishing. this exception, that there need not be more than ninety-two days in each year when rod fishing may not be carried on ; there must be ninety-two days, and these ninety-two must begin not later than the 1st December. There is nothing, however, to prevent the board fixing the ninety-two days from the 1st January, and so keeping December an open month for rod fishing.

(2) Weekly close time.

2. Weekly close time.

In regard to weekly close time the board has power, (1) to increase the weekly close time six hours, from forty-two up to forty-eight hours ; (2) to make the forty-two or forty-eight hours begin at any time between midnight on Friday and 6 P.M. on Saturday. There must be forty-two hours in each week close time, and it must last until midnight on Sunday, and not later than noon on Monday ; but, with this exception, the board can make it begin and end as they like. They may have a different weekly close time in different parts of the district : forty-eight hours in the estuary, beginning at 6 P.M. on Friday, forty-

two in the upper waters, beginning at 6 P.M. on Saturday; but there must be a minimum of forty-two, a maximum of forty-eight, hours.

3. Size and description of nets.

- (3) In regard to all moveable nets the board may, except as to hang nets and draft nets, fix by bye-law the length of net, the size of net, and the description of net they allow to be used for salmon.

Under this section a bye-law might be made, saying that no moveable nets (except hang and draft nets) that do not conform to a certain pattern may be used in the district.

No bye-law is to be made limiting the length of any hang net, or reducing the length of any draft net under 200 yards. But there is nothing to prevent a bye-law limiting the size, otherwise than by length, of any draft net or hang net, as long as the bye-law is reasonable, and does not make the use of hang or draft nets practically impossible. This is, of course, assuming that a hang net is a moveable net, and does not come within the extended definition of a fixed engine given by the Salmon Fishery Act, 1873; as the power of making bye-laws under this sub-section does not apply to fixed engines.

4. Size of mesh.

- (4) To fix the size of the mesh of nets to be used within the district. No net for taking salmon may now be used with a mesh less than two inches from knot to knot (*s*). By bye-law the mesh may be decreased to one

(*s*) 24 & 25 Vict. c. 109, s. 10.

and a-half, or extended to two and a-half inches.

It would seem doubtful if this section empowers boards to authorize a different mesh for different nets, as, for example, a draft net with one and a-half inches mesh, a stop net with two and a-half inches mesh.

Powers of board under the sub-section.

It seems that power is given to boards to lessen or extend the mesh for all kinds of nets, but they cannot prescribe a different kind of mesh for different nets.

No net with a less mesh than one and a-half inch will now be legal in any part of the district.

It is also doubtful if boards will have power to authorize the use of nets with different meshes in different parts of the district. The 40th section provides that a bye-law may apply to the whole or part of a district, and it may be questioned whether that power would not authorize a bye-law allowing small meshed nets in some places and large ones in others. A bye-law could be made under this section authorizing the use of different meshes at different times of the year, as bye-laws may be made for any part of the year; but it would seem doubtful if this must not extend to the whole district, and to all kinds of nets.

- (5) To determine the form of licence for use in public or common fisheries, and the form of licence to be used in private fisheries, and to settle the way in which licences shall be issued.

5. Form of licence.

This power is practically but a repetition of the power given by the Salmon Fishery Act, 1865 (*t*), which provided that the board of conservators should make rules for the issue of licences. The difference in the form of licences in public and private waters is rendered necessary by the provisions as to election of representative members, which gives votes only to licensees who take out licences to fish in public fisheries.

It will be observed, that while most of the other bye-laws are permissive, this is, in fact, compulsory, so that all boards who have any public or common fisheries will have to make a bye-law on this point.

6. Variation
of licence
duty.

- (6) To vary the rate of licence duty in different parts of the district in respect of the length and size of the net used.

This power is very similar to that given by the 25th section of the Salmon Fishery Act, 1873, only the 25th section includes all instruments for taking salmon, while under this power a bye-law could only be made varying the licence duty in respect to the size or length of a net. The 25th section gives a general power to vary the licence duties in different parts of the district. This subsection gives a power to vary the rate in respect of the length or size of any particular net; for example, in a part of a district where, as a rule, the licence on draft nets was 2*l.*; if there was a particular net that from its length and size swept

(*t*) 28 & 29 Vict. c. 121, s. 84, sub-sect. 7.

the river, it could be made to pay 5*l.* licence duty.

- (7) To determine the marks, labels or numbers to be attached to licensed nets, or painted upon boats, coracles or other vessels used in fishing.

7. Marks, labels and numbers.

This power to number and mark boats is taken from the Sea Fisheries' Act (*u*). By that act all boats and nets are lettered and numbered, so that it can be at once seen by reference to the number to whom the boats and nets belong. The provisions of the Sea Fisheries Act are given in the Appendix, as a guide to framing rules under this power.

- (8) To prohibit the use of nets within a certain distance of the mouth of any river, or of the confluence of rivers, unless the fishery there is private, in any part of the district; and to fix posts, buoys and landmarks to indicate such distance.

8. Prohibit netting near mouths of rivers.

By this means the conservators can prohibit all fishing, except rod and line, at the mouths of streams, unless the fishery is private, so as to give the fish an opportunity of ascending the tributaries of the main river. Although the act authorizes the erection of posts, buoys and landmarks, there is no power to go on the land to erect them, no penalty for removing them when

erected; and it would be very doubtful if in erecting them without the consent of the owner of the land the officers of the board would not be liable for trespass. It is also very doubtful how far the board would be authorized to fix buoys in navigable rivers, and whether they would not be liable to an indictment for so doing.

9. Use of
gaff.

- (9) To determine the time when it shall be lawful to use a gaff in connection with a rod and line.

Under this power the conservators would be able to make a bye-law prohibiting the use of a gaff at certain times of the year, but they would not be able to make a bye-law prohibiting the use of a gaff generally. It will be seen the gaff can only be used in connection with a rod and line, for otherwise its use is wholly illegal (*y*).

Gratings.

- (10) To determine when gratings shall be placed, during certain times of the year, across the head and tail race of any mill, and across any artificial channel.

The power here given is limited by sect. 58 of the Salmon Fishery Act, 1873, to fixing the times during the year when gratings may be kept up. There is no power here given to place gratings,—only, if gratings have been placed, to fix the times when they are to be kept up. The whole subject as to the placing of gratings is dealt with in a subse-

quent part of the act (z); this clause simply empowers the board by bye-law to say when the grating, if there is one, is to be shut. Practically the power here given is so guarded as to have but a very slight application; for no bye-law made under it will be good if the grating diminishes the supply of water to any mill, and as all gratings do this, more or less, the clause as to head races will have little practical effect. There are, however, no words to limit its application to the tail race of any mill; so that if a grating kept up under a bye-law dammed back the water on a mill, the miller would be bound by the bye-law. The power does not extend to any gratings on artificial channels for inland navigation or supplying towns with water, but no bye-law can be made under it to interfere with the passage of vessels or injure any inland navigation.

- (11) To regulate the use of nets during the annual and weekly close season for fish other than salmon, if the use is prejudicial to the salmon fisheries; but this power does not extend to several fisheries, or to rivers more than six miles across at low water.

11. Use of nets during close time for fish other than salmon.

It will be seen that this section only authorizes a bye-law to be made to regulate the use of nets, and great care must be taken that any bye-law under this section is not of that character that the regulation practically amounts to prohibition, and,

(z) Part IX., ss. 58—61; see Chap. VIII. p. 173.

therefore, the bye-law is void for excess. The use of the net regulated must be shown to be prejudicial to salmon. And between these two points bye-laws made under this power will have but a restricted operation. The object is to prevent fishing for shrimps and coarse fish in such a way as really to be fishing for salmon; but how that object is to be carried out under the words of the power to make the bye-law remains to be seen.

12. Night
netting.

- (12) To prohibit the use of any net in any inland water, except a landing net and a net for taking eels, between the expiration of the first hour after sunset and the last hour before sunrise.

A bye-law can be made under this to prohibit all net fishing for any fish, except eels, at night, not only salmon but any other fish. And this would include all stop nets, although fixed engines, as the power to prohibit any net to be used at night is absolute.

Application
of bye-laws.

A board of conservators may make any of these bye-laws to apply (a),—

- (1) To the whole district throughout the year;
- (2) To the whole district for part of the year;
- (3) To the whole district for different parts of the year;
- (4) To a part or parts of a district for the whole year;
- (5) To a part or parts of a district for part of the year;

(a) 36 & 37 Vict. c. 71, s. 40.

- (6) To a part or parts of a district for different parts of the year (*b*).

They may from time to time, by a new bye-law,— Alteration of bye-laws.

Revoke any existing bye-law;

Vary any existing bye-law as to its terms;

Alter any existing bye-law in whole or in part as to its terms, or as to its application, and either extend it to the whole or other parts of the district, or restrict its operation to particular parts of the district, or exclude any part of the district from the operation of all or any of the bye-laws.

The bye-laws, when made, confirmed and published, as directed in the Salmon Fishery Act, 1873, are binding upon all persons, and justify all persons acting under them (*c*). They are as much the law of the land, within the limits and with respect to the persons upon whom they lawfully operate, as an act of parliament is upon the subjects at large (*d*). Bye-laws when confirmed binding on all parties.

The bye-laws are proved by the production of a written or printed copy purporting to have been confirmed and sealed with the seal of the board, which is conclusive evidence of the existence and due making of any bye-laws (*e*). A copy of the newspaper containing the notice of the making Proof of bye-laws.

(*b*) 36 & 37 Vict. c. 71, s. 40.

(*c*) Sect. 44.

(*d*) *Hopkins v. Swansea*, 4 M. & W. 640; 36 & 37 Vict. c. 71, s. 44.

(*e*) 36 & 37 Vict. c. 71, s. 45.

of any bye-law is evidence that all the requisites for the making and publication of such bye-law have been duly complied with (*a*).

Penalty under
bye-laws.

Although the penalty mentioned in any bye-law must not exceed 5*l.*, and must be so framed as to allow part of the penalty only to be paid, yet by the operation of the 56th section of the Salmon Fishery Act, 1865, as amended by the 18th section of the Salmon Fishery Act, 1873, the penalty under a bye-law is not to exceed 5*l.* for a first offence nor to be less than 2*l.* 10*s.* or more than 5*l.* for a second offence, nor to be less than 5*l.* for the third or any subsequent offence (*b*).

Statutes as to Bye-laws.

Power to
make bye-
laws.

Subject to the provisions hereinafter contained for the confirmation and publication of bye-laws, a board of conservators may make bye-laws for the better execution of the Salmon Fishery Acts, 1861 to 1873 (*c*). A board may, by any bye-law, impose a penalty not exceeding the sum of five pounds for each offence against such bye-law (*c*).

Mode of
making bye-
laws.

A bye-law shall be so framed as to allow the justices before whom any penalty imposed thereby shall be sought to be recovered to order the whole or part only of such penalty to be paid (*c*).

A bye-law having been reduced to writing and sealed with the common seal of the board shall be confirmed and published in manner hereinafter provided (*c*).

Bye-laws to
be open to in-
spection be-
fore applica-
tion to con-
firm them.

For one month at least before any application for confirmation of any bye-laws, notice of the intention of the said board to apply for such confirmation shall be given once in each week by

(*a*) 36 & 37 Vict. c. 71, s. 45.

(*b*) 28 & 29 Vict. c. 121, ss. 56, 57; 36 & 37 Vict. c. 71, s. 18.

(*c*) 36 & 37 Vict. c. 71, s. 39.

advertisement in one or more newspapers circulating in the district, and a copy of the proposed bye-laws shall be kept at the office of the board, or some place to be appointed by the chairman for that purpose, and all persons may at all reasonable times inspect such copy without fee or reward, and the said board shall furnish every person who shall apply for the same with a copy thereof, or of any part thereof, on payment of one penny (d).

No bye-law made by any board of conservators shall come into operation until the same has been confirmed by one of her Majesty's principal secretaries of state, who may direct an inquiry into the same at such time and place and before such persons and after giving such notices as he shall think fit; and with or without such inquiry he may allow or disallow the said bye-laws as he shall think fit: provided that if at any time before the confirmation of any bye-law for any purpose mentioned in subsections one, two, three, four, or eight of section thirty-nine of the Salmon Fishery Act, 1873, any owner or occupier of any fishery or any licensee who would be affected by such bye-law shall, by notice in writing to the secretary of state, object thereto, and shall give such security for the payment of any costs attending the inquiry and the notice hereinafter mentioned as the secretary of state may require, the secretary of state shall either disallow such bye-law or cause a public inquiry to be held in some convenient place by such person or persons as he may appoint, when all persons interested may have the opportunity of being heard; and after such inquiry the secretary of state shall either disallow such bye-law or give one month's notice of his intention to allow the same by advertisement in some newspaper or newspapers circulating in the district affected thereby (e).

Confirmation
of bye-laws.

The said bye-laws when confirmed shall be printed, and the secretary or clerk to the said board shall deliver a printed copy thereof to every person who shall pay licence duty without charge, and a copy thereof shall be placed and renewed from time to time, on boards, or put up in some conspicuous place or places within the district, and shall be open to inspection without fee or reward; and in case the said secretary or clerk shall wilfully

Bye-laws
when con-
firmed to be
printed and
published.

(d) 36 & 37 Vict. c. 71, s. 42.
(e) Sect. 41.

refuse to deliver or to allow the same to be inspected as aforesaid, he shall for every such offence be liable to a penalty not exceeding five pounds (*d*).

Boards may
make bye-
laws for cer-
tain purposes

A board of conservators may make bye-laws for the better execution of the Salmon Fishery Acts, 1861 to 1873, and for the better protection, preservation and improvement of the salmon fisheries within their district, and alter the same from time to time for all or any of the following purposes; (that is to say,)

- (1.) To alter the commencement and termination of the annual close season as to the whole or part of the district, so that such close season, when so altered, shall not be less than one hundred and fifty-four days, for all modes of fishing, except with rod and line, and shall not commence later than the first of November in each year, and as regards fishing with rod and line, so that such close season shall not be less than ninety-two days, and shall not commence later than the first of December in each year:
- (2.) To alter the commencement and termination of the weekly close season as to the whole or part of a district, so that such season shall not commence before six o'clock on Friday afternoon, and not terminate earlier than midnight on the Sunday following, nor continue later than twelve o'clock on the following Monday at noon; such weekly close time in no case to exceed forty-eight hours:
- (3.) To determine the length, size and description of nets, and the manner of using the same (not being fixed engines) for taking salmon: provided that no bye-law made under the authority of this section shall limit the length of a hang net or limit the length of a draft net so as to be less than two hundred yards:
- (4.) To determine the minimum size of the mesh of nets for catching salmon that shall be lawfully used within the district, so that such mesh shall not be less than one and a-half inch from knot to knot, and so that no person shall be compelled to use a mesh larger than two and a-half inches, measured when wet:

- (5.) To determine the form of licence and the manner in which licences shall be issued, provided that different forms be used for licences for fishing in public and common and in private fisheries :
- (6.) To vary the rate of licence duty in different parts of the district, in respect of the length or size of the net used, so that such duty shall not exceed the sum mentioned in the third schedule to the Salmon Fishery Act, 1873 :
- (7.) To determine what marks, labels or numbers shall be attached to licensed nets, or painted upon or affixed to boats, coracles, or other vessels used in fishing :
- (8.) To prohibit the use of nets within a certain distance of the mouth of any river, and of the point of confluence of rivers in any part of the district (not being a several fishery), and to erect and fix posts, buoys and land-marks to indicate such distances respectively :
- (9.) To determine the time during which it shall be lawful to use a gaff in connection with a rod and line :
- (10.) To determine when gratings shall be placed during certain times of the year across the head and tail race of mills and across any artificial channel, so, however, as not to diminish the supply of water to any mill, nor to interfere with the passage of vessels, or otherwise injure any inland navigation or lock, but so that the provisions of the thirteenth section of the Salmon Fishery Act, 1861, shall not be affected :
- (11.) To regulate during the annual and weekly close seasons the use within any river of nets for fish other than salmon, when such use at such times is prejudicial to the salmon fisheries : provided that nothing in this sub-section contained shall authorize anything to be done which shall affect any part of any river in which part there is a several right of fishery, or any river or part of any river, where the breadth at low water is greater than six miles :
- (12.) To prohibit the use in any inland water of any net, except a landing net or a net for taking eels, between the expiration of the first hour after sunset and the last hour before sunrise(e).

Bye-law may apply to the whole or part of a district and to the whole or part of a year.

A board of conservators may make any bye-law to apply to the whole or to any part or parts of their district, and to the whole or any part or parts of the year, and may from time to time by any new bye-law revoke, vary, or alter either in whole or in part, or as to its application to the whole or to any part or parts of the district, any bye-law previously made, and may from time to time vary any bye-law made in respect of the whole or any part or parts of the district, and may from time to time except or exclude from the operation of all or any of the bye-laws any part or parts of the district, or extend the operation of any bye-law made for any part or parts of the district to the whole or other parts of the district (*f*).

Bye-laws when confirmed and published to be binding on all persons.

Any bye-law made, confirmed and published according to the provisions of the Salmon Fishery Act, 1873, shall be binding and be observed by all parties, and shall be sufficient to justify all persons acting under the same (*g*).

Bye-laws proved by copy having seal of board and publication in newspapers.

The production of a written or printed copy of any bye-law purporting to have been confirmed, authenticated by the common seal of the board, shall be conclusive evidence of the existence and due making of such bye-law in all legal proceedings, and the production of a copy of any newspaper or newspapers containing the notice of the making of any such bye-law shall be taken and received in all legal proceedings as evidence that all things required by this act for the making and publication of the bye-law therein advertised have been duly done, performed, and published (*h*).

(*f*) 36 & 37 Vict. c. 71, s. 40.

(*g*) Sect. 44.

(*h*) Sect. 45.

CHAPTER V.

WATER BAILIFFS.

UNDER the Salmon Fishery Act, 1865, boards of conservators were empowered to appoint by writing under the hand of the acting chairman of the board for the time being a sufficient number of water bailiffs and officers, and to assign them their salaries and duties (*a*). Boards may appoint water bailiffs.

By that act the conservators and the water bailiffs had concurrent power for the protection of the fisheries; the Salmon Fishery Act, 1873, has, however, taken away the police power from the conservators except in a very few cases, and now they are possessed by the water bailiffs only. The powers of water bailiffs for the protection of the fisheries in their districts, including all persons acting as such under the written authority of the board, are— Powers of water bailiffs.

- (1) To examine any weir, dam, fishing weir, fishing mill dam, fixed engine or obstruction (*b*);
- (2) To examine any artificial watercourse connected with any river in the district (*b*);
- (3) To stop and search on any stream, lake, estuary, sea or sea coast in the district,

(*a*) 28 & 29 Vict. c. 121, s. 27.

(*b*) 36 & 37 Vict. c. 71, s. 36.

any boat, barge, coracle or other vessel used in fishing (*b*);

- (4) To stop and search in the same place any boat, barge, coracle or other vessel which there is reasonable cause to suspect contains salmon (*b*);

- (5) To seize—

Fish forfeited
under Salmon
Fishery Acts.

1. The following fish:—Any salmon caught in illegal fixed engines (*c*), or illegally caught in legal fixed engines, dams, or at mills, or in the head or tail race of any mill (*d*); all salmon caught during the annual or weekly close time (*e*); all trout or char caught in any salmon river in a fishery district between the 2nd day of October and the 1st day of February (*f*); all salmon offered for sale between the 2nd of September and the 1st of February (*g*); all trout or char offered for sale between the 2nd of October and the 1st of February (*h*); all unclean or unseasonable salmon, trout or char (*i*), or the young of salmon (*j*); all salmon caught in fixed engines through which a passage has not been left during weekly

(*b*) 36 & 37 Vict. c. 71, s. 36.

(*c*) 24 & 25 Vict. c. 109, s. 11.

(*d*) Sect. 12; 36 & 37 Vict. c. 71, s. 17.

(*e*) 24 & 25 Vict. c. 109, ss. 17 and 21.

(*f*) 28 & 29 Vict. c. 121, s. 64.

(*g*) 36 & 37 Vict. c. 71, s. 19.

(*h*) Sect. 20.

(*i*) 24 & 25 Vict. c. 109, s. 14.

(*j*) Sect. 15.

close time (*k*); all salmon caught in their passage through any fish pass (*l*):

2. The following instruments:—Any light, spear, strokehall, otter lath or jack, wire or snare used or intended to be used for catching salmon, trout or char (*m*); all salmon roe found in any person's possession (*n*); all small meshed nets used for taking or attempting to take any salmon (*o*); all illegal fixed engines (*p*) used for catching or facilitating the capture of salmon; all traps, nets and contrivances used at any illegal dam or at any legal dam in an illegal way; all boxes, baskets, nets, implements and devices, except rod and lines, used for fishing for salmon within fifty yards above or one hundred yards below any weir, dam or artificial obstruction, or in the head race, tail race or waste race of any mill or any artificial channel connected with any mill, unless at such mill or in such weir a fish pass is in existence which has been approved by the home office (*q*); all rods, lines, nets, devices and instruments used in taking or de-

Instruments
forfeited
under Salmon
Fishery Acts.

(*k*) 24 & 25 Vict. c. 109, s. 12.

(*l*) Sect. 23.

(*m*) Sect. 8.

(*n*) Sect. 9.

(*o*) Sect. 10.

(*p*) Sect. 11.

(*q*) Sect. 12; 36 & 37 Vict. c. 71, s. 17.

stroying the young of salmon, or obstructing their passage, or in disturbing any spawning bed of salmon (*p*); all nets employed in fishing for salmon during the annual close time (*q*); all fixed engines for catching salmon not removed within thirty-six hours after the commencement of the annual close time (*r*); all nets and moveable instruments used for taking salmon during the weekly close time (*s*); and any instrument used in taking salmon in its passage through any fish pass (*t*):

(6) To search and examine all nets, baskets, bags or other instruments used in fishing (*u*);

(7) To search and examine all nets, baskets, bags or other instruments used in carrying fish by persons whom there is reasonable cause to suspect of having possession of fish illegally caught (*u*).

Penalty on refusing to allow water bailiff to execute his powers.

Any person refusing to allow a water bailiff to do any of the above things, or resisting or obstructing him in doing them, is liable to a penalty of not exceeding 5*L* for the first offence; of not less than 2*L* 10*s*. and not exceeding 5*L* for the second, and if a licensee to forfeit his licence;

(*p*) 24 & 25 Vict. c. 109, s. 15.

(*q*) 28 & 29 Vict. c. 121, s. 58.

(*r*) 24 & 25 Vict. c. 109, s. 20.

(*s*) Sect. 21.

(*t*) Sect. 23.

(*u*) 36 & 37 Vict. c. 71, s. 36.

of not less than 5*l.* and forfeiture of licence for the third and every subsequent offence.

If any person assault, resist or wilfully obstruct any water bailiff in the due execution of his duty, he is guilty of a misdemeanor and liable to two years' imprisonment with hard labour (*y*).

Assaulting water bailiff in execution of his duty.

A water bailiff can, on exhibiting his warrant, demand the production of a licence by any person he finds fishing; and if the person does not produce his licence or make reasonable excuse for not doing so he is liable to a penalty of 1*l.* (*z*).

Call on person fishing to produce his licence.

In addition to these general powers a water bailiff has various special powers:—

Special powers of water bailiff.

- (1) On applying to a justice of the peace and giving information upon oath that he has good reason to suspect that acts in contravention of the Salmon Fishery Acts are being done or are likely to be done on any land situate near to a salmon river, he may obtain an order under the hand of such justice authorizing him to remain upon such land for a limited period to be specified in the order, and not exceeding twenty-four hours, during any time of the day or night for the purpose of detecting offences against the Salmon Fishery Acts (*a*).
- (2) By a special order in writing from the board of conservators signed by the chairman for the time being, a water bailiff may for a

(1) Obtain order to remain on land.

(2) Obtain order to traverse land.

(*y*) 24 & 25 Vict. c. 100, s. 38.

(*z*) 28 & 29 Vict. c. 121, s. 37.

(*a*) Sect. 31.

period not exceeding two months from the date of such order enter, remain upon and traverse any lands adjoining or near a salmon river in his district at all times while the order remains in force, except any land used as a decoy or set apart exclusively for the preservation of wild fowl^(b).

(4) Obtain search warrant.

- (4) On applying to a justice of the peace and giving information upon oath that there is good cause to suspect any breaches of the Salmon Fishery Acts have been committed, or that any salmon illegally taken or any illegal nets or engines are concealed on any premises, a water bailiff may obtain a search warrant empowering him to enter, search for and seize any salmon illegally taken, or illegal nets or engines he may find on such premises, at such times of the day or night, and for such period not exceeding one week from the date of such order as is mentioned therein.

Water bailiff has powers of constable.

Special privileges of constables.

In enforcing the provisions of the Salmon Fishery Acts, a water bailiff has the same privileges and powers, and is subject to the same liabilities to which a constable is by virtue of the common law or any statute^(c). The most important of these are—that any action brought against him for any act done in the execution of his duty must be brought within six months^(d);

(b) 36 & 37 Vict. c. 71, s. 37.

(c) 24 & 25 Vict. c. 109, s. 34.

(d) 24 Geo. 2, c. 44, s. 8.

that they may plead in bar to any action brought against him that he has had no notice of action (*e*), which must be given at least one calendar month before the action is brought (*f*); and that he can plead the general issue, and prove under it any special justification as fully as if such justification had been specially pleaded.

The production by a water bailiff of the warrant of his appointment is a sufficient authority for him to exercise any of the general powers given by the Salmon Fishery Acts (*g*). For the exercise of any of the special powers he must also produce his special authority. Production of warrant.

A water bailiff may apprehend without warrant any person he finds between the first hour after sunset and the last before sunrise on the following morning, either—(1) illegally taking or killing salmon, trout or char; or (2) near any salmon river, with intent illegally to take or kill salmon, trout or char; or (3) with any illegal instruments for taking salmon, trout or char (*h*). Of course, during the annual or weekly close time, any nets or other instruments whatsoever for taking salmon, trout or char would come within the last definition or the preceding one to evidence the intent for which the persons were near the river. In the open time, however, the illegal instruments would be confined to any light, otter lath, jack, wire, snare, spear, Power of arrest at night.

(*e*) 10 Geo. 4, c. 44, s. 41.

(*f*) 5 & 6 Vict. c. 97, s. 4.

(*g*) 36 & 37 Vict. c. 71, s. 36.

(*h*) Sects. 38 and 18.

gaff, strokehall, snatch, fish roe and salmon nets with an illegal mesh. If a person was found with fish roe, or a snatch used as a rod and line, the water bailiff would be justified in arresting him at any time of the night.

Resisting or
assaulting
water bailiff.

As before stated, resisting any water bailiff in the due execution of his duty, or any person assisting such water bailiff, or assaulting any person with intent to resist the lawful apprehension or detainer of the person making the assault, or of any other person, is a misdemeanor punishable with two years' imprisonment with hard labour (*h*).

Powers under
Larceny Act,
24 & 25 Vict.
c. 96.

Under the Larceny Law Consolidation Act (*i*), in *private* fisheries the servants of the owner, or any persons authorized by the owner, may seize any rod, line, hook, net or implement whatever for taking or destroying fish that they may find any person using in any private water or fishery.

Under this provision a water bailiff, if authorized by the owner, would be justified in seizing any fishing tackle or nets he might find being used in a private fishery, and also, except in the case of a person angling in the day time, in arresting any person he may find fishing (*k*) in a private fishery, provided he is authorized by the owner of the fishery to make such arrest.

Powers under
Malicious In-
juries to Pro-
perty Act,
24 & 25 Vict.
c. 97.

If a water bailiff find any person putting lime or noxious material into any salmon river, with

(*h*) 24 & 25 Vict. c. 109, s. 38.

(*i*) 24 & 25 Vict. c. 96, ss. 24 and 25.

(*k*) Sect. 103.

intent to destroy any of the fish, he may apprehend him at once without warrant (*l*).

The cases in which conservators still have water bailiffs' powers are the following:—(1) They can, on production of a certificate under the seal of the board of their being members, demand to see the licence of any one they may find fishing (*m*). (2) They may obtain an order from a justice of the peace authorizing them to remain on land near a salmon river for a limited time, not exceeding twenty-four hours, if they suspect offences against the Salmon Fishery Acts are about to be done, for the purpose of detecting them (*n*); and (3) They may obtain a warrant from a magistrate to search for illegal nets or instruments or salmon illegally taken (*o*). This last power applies equally to the police.

Police powers
of conserva-
tors.

Under the statute amending the law for the establishment of county and district constables (*p*), a board of conservators, on application to the chief constable of any county, can, with the approval of the court of quarter sessions, obtain the services of any number of additional constables they may require to act as water bailiffs; and such constables, and any other persons who are appointed by the board to act as water bailiffs, while so acting, will be entitled to the same rights, and subject to the

Special con-
stabiles.

(*l*) 24 & 25 Vict. c. 97, ss. 32 and 61; 36 & 37 Vict. c. 71, s. 13.

(*m*) 28 & 29 Vict. c. 121, s. 37.

(*n*) Sect. 31.

(*o*) 24 & 25 Vict. c. 109, s. 34.

(*p*) 3 & 4 Vict. c. 88, s. 19.

same liabilities, as other constables and water bailiffs (*r*).

Statutes as to the Powers of Water Bailiffs.

Powers of
water bailiff

Any water bailiff appointed under the Salmon Fishery Acts, 1861 to 1873, acting within the limits of his district, may do all or any of the following things; (that is to say,)

- (1) Examine any weir, dam, fishing weir, fishing mill dam, fixed engine, or obstruction, or any artificial watercourse connected with any salmon river; and any person refusing to any water bailiff access to any such weir, dam, fishing weir, fishing mill dam, fixed engine, obstruction, or watercourse, shall be liable for every such offence to a penalty not exceeding five pounds;
- (2) Stop and search on any salmon river any boat, barge, coracle, or other vessel used in fishing, or which there is reasonable cause to suspect contains any salmon, and seize any fish, instrument of fishing, or other articles forfeited in pursuance of the Salmon Fishery Acts, 1861 to 1873; and any person refusing to allow any such boat, barge, coracle, or other vessel to be stopped and searched, or resisting or obstructing any water bailiff in any such search, shall for every such offence be liable to a penalty not exceeding five pounds;
- (3) Search and examine all nets, baskets, bags, or other instruments used in fishing or in carrying fish by persons whom there is reasonable cause to suspect of having possession of fish illegally caught; seize all fish and other articles forfeited in pursuance of the Salmon Fishery Acts, 1861 to 1873; and any person refusing to allow any nets, baskets, bags, or other instruments used in fishing or in carrying fish to be searched or examined, or resisting or obstructing any water bailiff in any such search or examination, shall for every such offence be liable to a penalty not exceeding five pounds (*s*).

Production of
licence.

Any licensee under this act on producing his licence, any conservator on producing a certificate of his being a conservator, or

(*r*) 28 & 29 Vict. c. 121, s. 27.

(*s*) 36 & 37 Vict. c. 71, s. 36.

any water bailiff appointed in pursuance of this act on producing the instrument appointing him, or any constable if authorised to do so by the justices in quarter sessions, may require any person found fishing with a rod and line, fishing weir or fishing mill dam, net or other instrument, to produce his licence; and the person required to produce the same shall, if he do not produce the same, or make a reasonable excuse for the non-production thereof, be liable for a first offence to a penalty of not exceeding one pound, for a second and every subsequent offence to a penalty of not less than one pound and forfeiture of his licence if a licensee (t).

It shall be lawful for any justice of the peace, upon an information on oath that there is probable cause to suspect any breach of the provisions of the Salmon Fishery Acts, 1861—1873, to have been committed on any premises, or any salmon illegally taken or any illegal nets or other engines to be concealed on any premises, by warrant under his hand and seal, to authorise and empower any water bailiff, conservator, constable, or police officer to enter such premises for the purposes of detecting such offence, or such concealed fish, at such time or times, in the day or night, as in such warrant may be mentioned, and to seize all illegal engines, or any salmon illegally taken, that may be found on such premises; provided that no such warrant shall continue in force for more than one week from the date thereof (u).

Justice may grant a warrant to enter suspected places.

Where it appears to any justice of the peace, on the application of any conservator or water bailiff made on oath, that such conservator or bailiff has good reason to suspect that acts in contravention of the Salmon Fishery Acts, 1861 to 1873, are being or are likely to be done on any land situate on or near to a salmon river, the justice may, by order under his hand, authorise such conservator or bailiff, during a limited period, to be specified in such order, not exceeding twenty-four hours, to enter upon and remain on such land during any hours of the day or night for the purpose of detecting the persons guilty of the aforesaid acts; and no conservator or water bailiff entering or remaining on any land in pursuance of such order shall be deemed to be a trespasser; but this section shall not affect any

Order for entry of water bailiff on land.

(t) 28 & 29 Vict. c. 121, s. 37.

(u) 24 & 25 Vict. c. 109, s. 34.

other powers of search conferred by the Salmon Fishery Acts, 1861 to 1873 (*x*).

Water bailiff
may enter
on land.

Any water bailiff may under a special order in writing from the board of conservators, signed by the chairman for the time being of such board, for this purpose at all reasonable times enter, remain upon, and traverse any lands, not being a dwelling-house or the curtilage thereof, adjoining or near to any salmon river within the fishery district of such board, for the purpose of preventing any breach of the provisions of the Salmon Fishery Acts, 1861 to 1873; and no water bailiff entering, remaining upon, or traversing any land in pursuance of such order shall be deemed a trespasser; provided always that this clause shall not apply to decoys or lands used exclusively for the preservation of wild fowl, and that no such order shall remain in force for more than two months from the date thereof. But nothing herein contained shall affect any other powers of search conferred by the Salmon Fishery Acts, 1861 to 1873 (*y*).

Water bailiff
to be deemed
a constable.

For the enforcement of the provisions of the Salmon Fishery Acts, 1861 to 1873, every water bailiff shall be deemed to be a constable, and to have all the same powers and privileges, and be subject to the same liabilities as a constable duly appointed now has or is subject to in his constableness, by virtue of the common law of the realm or of any statute (*z*);

The production by a water bailiff of the instrument of his appointment, executed in the manner prescribed in the Salmon Fishery Act, 1865, shall be a sufficient warrant for any water bailiff exercising the authorities given to him under the Salmon Fishery Acts, 1861 to 1873 (*x*).

Persons fish-
ing illegally
at night may
be appre-
hended.

If any person, between the expiration of the first hour after sunset on any day, and the beginning of the last hour before sunrise of the following morning, illegally takes or kills salmon, trout or char, or is found on or near any salmon river with intent illegally to take or kill salmon, trout or char, or having in his possession for the capture of salmon, trout or char, any instrument prohibited by the Salmon Fishery Acts, 1861 to 1873, it shall be lawful for any water bailiff, together with any assistants, to seize and apprehend any such offender without

(*x*) 28 & 29 Vict. c. 121, s. 31.

(*y*) 36 & 37 Vict. c. 71, s. 37.

(*z*) Sect. 36.

warrant, and to deliver him, as soon as may be, into the custody of a peace officer, in order to his being conveyed before two justices of the peace for the purpose of being convicted in the penalty assigned for his offence (a).

Whoever shall assault, resist, or wilfully obstruct any peace officer in the due execution of his duty, or any person acting in aid of such officer, or shall assault any person with intent to resist the lawful apprehension and detainer of himself or of any other person for any offence, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years with or without hard labour (b).

Resisting
water bailiff
in the execu-
tion of his
duty.

If any person shall at any time be found fishing, the owner of the ground, water or fishery where such offender shall be so found, his servant or any person authorized by him, may demand from such offender any rod, line, hook, net, or any implement for taking or destroying fish which shall then be in his possession, and, in case such offender shall not immediately deliver up the same, may seize and take the same from him for the use of such owner (c).

Seizure of
tackle of
fishers.

Any person found committing any offence punishable, either upon indictment or upon summary conviction, by virtue of the Larceny Consolidation Act, except only the offence of angling in the day time, may be immediately apprehended without a warrant by any person and forthwith taken, together with such property, if any, before some neighbouring justice of the peace, to be dealt with according to law (d).

Arrest of
persons
offending
against the
Larceny Act.

Any person found committing any offence against the Malicious Injuries to Property Act, whether the same be punishable on indictment or upon summary conviction, may be immediately apprehended without a warrant by any peace officer or the owner of the property injured, or his servant, or any person authorized by him, and forthwith taken before some neighbouring justice of the peace to be dealt with according to law (e).

Persons in
the act of
committing
any offence
may be ap-
prehended
without a
warrant.

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- (a) 36 & 37 Vict. c. 71, s. 38.
 - (b) 24 & 25 Vict. c. 100, s. 32.
 - (c) 24 & 25 Vict. c. 96.
 - (d) Sect. 103.
 - (e) 24 & 25 Vict. c. 97, s. 61.

CHAPTER VI.

LICENCES.

IN order to provide funds for carrying into effect the Salmon Fishery Acts, the Act of 1865 introduced into England the system of licence duties, a system which had been for some time in force in Ireland, and which has now been in operation in England and Wales since the open season of 1866.

Boards to
issue licences.

One of the duties assigned to boards of conservators by the Salmon Fishery Act, 1865, was,—

To issue such licences for fishing as were provided by that act (*a*).

And one of the points upon which the Salmon Fishery Act, 1873 (*b*), allows conservators to make bye-laws is,—

To determine the form of licence and the manner in which licences shall be issued, provided that different forms be used for licences for fishing in public or common and in private fisheries (*b*).

Such being the duty imposed by law upon the conservators, it will be well to see the machinery which the law has provided for carrying it out. It may be premised that unless a river is formed

(*a*) 28 & 29 Vict. c. 121, s. 27.

(*b*) 36 & 37 Vict. c. 71, s. 39.

into a fishery district no licence is needed for catching salmon. But as soon as a fishery district is formed, the board of conservators are bound to give notice, by advertisement in one or more newspapers circulating in their district, of a fixed day, not less than three months from the date of the appointment of the board, after which it will be illegal to fish for salmon without a licence in that district, and the places where the licences can be procured (c).

Unless in a fishery district no licence required.

If after that date any one fishes for salmon with a rod and line without a licence, he is liable to a penalty of not less than double the amount of the licence, that is, if the duty is fixed at the maximum of 3*l.*, and not more than 5*l.* (d) for the first offence; of not less than 3*l.* and not exceeding 5*l.* for the second; and for every subsequent offence of not less than 5*l.*

Penalty for fishing with rod and line without a licence.

If any persons use any other instrument or device for taking salmon without a proper licence, they are liable to pay a penalty not less than double the licence duty and not exceeding 20*l.* (e) for the first offence; not less than 2*l.* 10*s.* or double the licence duty, whichever is the highest amount, or more than 20*l.* for the second; of not less than 5*l.* or double duty, or more than 20*l.* for the third; of not less than 20*l.* for the fourth.

Penalty for fishing without a licence in any other way.

A difficulty was found in carrying out the Act of 1865, as in the schedule to that act only certain

(c) 28 & 29 Vict. c. 121, s. 34.

(d) Sect. 35.

(e) Sect. 36.

Taking
salmon by an
unlicensed
instrument.

modes of fishing for salmon were mentioned; other modes not named there were to be specially licensed by the secretary of state. If, therefore, a person took a salmon without a licence by a mode not named in the Act of 1865, and not specially licensed by the secretary of state, as the penalty was double the amount of licence duty and as no licence duty was payable he escaped scot free. To meet this difficulty the 22nd section of the Act of 1873 (*f*) provides, that if in any fishery district a person fishes for, takes or kills any salmon by any means except a properly licensed fishing weir, fishing mill dam, fixed engine, instrument, net or device for catching or facilitating the catching of salmon, or assists any person in doing so, he shall be liable to a penalty not exceeding 5*l.*, and an additional penalty of 1*l.* in respect of each salmon caught. The section, however, provides that it is not to extend to any one using a gaff or landing net, as an assistant to a duly licensed angler.

Using engines
adapted for
taking
salmon with-
out a licence.

The point arose shortly after the Act of 1865 was passed—whether, if a person used, in a fishery district, any engine mentioned in the Salmon Fishery Act, 1865, as engines whereby salmon are caught, he was liable to pay licence duty for them, although the engines were ostensibly used for the purpose of catching not salmon but other fish. The point was decided in the cases of *Lyne v. Leonard* and *Lyne v. Ffennell* (*g*). In *Lyne v. Leonard* the

*Lyne v. Leo-
nard.*

(*f*) 36 & 37 Vict. c. 71.
(*g*) L. R., 3 Q. B. 156.

respondent was charged with using seventy fishing putts for catching salmon within the Usk Fishery District without having a licence. The respondent admitted that the putts were placed in the fishery, but said he had placed in them at all times circles (that is, a circular grating of wire or basket work in the mouth of each putt to which a string was attached, so that it might be removed at any moment by pulling the string, and thus at any convenient moment the putts could be made to take salmon) within them, by means of which salmon could not pass into them, and that they were used for catching shrimps and flat fish only, and therefore did not require a licence.

*Lyne v.
Leonard.*

It was contended by the appellant that the putts were fixed engines for catching salmon, and were so declared under the Salmon Fishery Act, 1861 (*h*), and that it was not necessary to prove the purpose for which they were put down.

The justices were of opinion that it was necessary for the appellant to prove that the putts were laid down for the purpose of taking salmon, and that it was not sufficient, in order to bring the respondent within the penal clause (*i*), to prove only the naked fact that the putts were there; and they declined to convict on the ground that there was no evidence that the putts were there for the purpose of catching salmon, or that salmon had been caught in them. But they granted a case

(*h*) 24 & 25 Vict. c. 109, s. 4.

(*i*) 28 & 29 Vict. c. 121, s. 36.

*Lyne v.
Leonard.*

for the Court of Queen's Bench, and the question for the court was, whether the mere fact of the putts being placed in the fishery was sufficient on which to convict the respondent of using them for catching salmon without a proper licence.

In giving judgment Mr. Justice Blackburn said: "We think that the justices were wrong in both cases. The object of the legislature in requiring licences to be granted, was to collect a sum of money to defray the expenses of carrying into effect the Salmon Fishery Acts, 1861 and 1865, and it is only fair that those who benefit by the protection to the salmon fisheries should bear the expense of it. When we look at sect. 33, we find a provision that licences shall be granted to all persons using any rod and line for fishing for salmon, and in respect of all fishing weirs, fishing mill dams, putts, putchers, nets, or other instruments or devices, except rod and lines, whereby salmon are caught. I think the meaning of that is, that a licence shall be granted to a man who uses one of those devices by which salmon may be caught, not who uses a device for the purpose of catching salmon, or who tries to catch salmon, as that might be difficult to prove. A man who uses a putt or a putcher, which is an instrument or device by which salmon are caught, is a person who benefits by the salmon fishery protection, and he is therefore to pay for a licence to use it. By sect. 36, the penalty is imposed on persons using any fishing weir, fishing mill dam, putt, putcher, net or other instrument or device, not being a rod and line, for catching salmon,

without having a proper licence. In the second case, the respondent put down a putt in such a state that salmon could be caught in it, and the justices thought it was necessary for the appellant to show that the respondent meant to catch salmon with it; but that is a mistake on their part; the penalty is imposed irrespective of intention. If people use an instrument whereby salmon may be caught, they must pay for a licence. In the other case there is this small difference,—the justices found that in the putt there was a circle, and from the explanation we had of it, we find that the circle is a wire grating which is put into the putt, and as that remains fixed salmon cannot get in; but that from its nature it can be, at a minute's notice, pulled out, and then the putt would be a device or instrument for catching salmon. I do not think that the fact of having a circle in it would prevent the putt from being a device or instrument for catching salmon.

*Lyne v.
Leonard.*

“There might possibly be a case where a fishing weir was so staked up that it ceased to be a fishing weir, and so in the same way what was once a putt might be closed up in such a manner that it ceased for the time to be a putt; but that it cannot be said to cease to be a putt when there is only that which causes a temporary interruption to its use, which interruption may at any moment be removed. We think that the justices were wrong in both cases, and they must be sent back to them.”

Mr. Justice Mellor said: “I am of the same

B.

G

*Lyne v.
Leonard.*

opinion. It is impossible not to see that any other decision would produce serious mischief. By fixing something in a putt, which can be removed at a moment's notice, salmon are prevented from going into it; but still the putt does not cease to be an instrument by which salmon are caught, for the circle may be at any moment pulled out. I agree with the rest of the court in thinking that in both cases the justices were wrong."

Mr. Justice Lush said: "I also think that the justices have put a wrong construction on sect. 36. If that section had stood alone it might, perhaps, be taken to mean any person using an instrument for the purpose of catching salmon; but reading that section with sect. 33, the words that are used clearly apply to using instruments adapted for catching salmon, whether they are really used for that purpose or not."

*Lyne v.
Ffennell.*

In *Lyne v. Ffennell* (k) the facts were precisely similar, the only difference being that in that case the putts had no circles inside them, and here also the court held that the respondent was liable to pay licence duty. It will be observed that this case does not go so far as to say that if the putts were permanently fenced so that the capture of salmon was an impossibility the owner would be liable to pay licence duty; it only says that if an engine is used by which salmon *may* possibly be caught, whether set for the purpose of catching

(k) L. R., 3 Q. B. 156.

salmon or not, that then the owner is liable to pay licence duty. But it would seem that when an instrument (not peculiarly adapted for catching salmon) is used for the purpose of catching other fish, no licence duty would be payable. At least this seems to be the rule to be drawn from the subsequent case of *Watts v. Lucas* (1); Watts v. Lucas. there the respondent was charged with using a fixed net which he stated was for the purpose of taking mullet and other fish not of the genus salmon, and no contrary evidence was adduced. The court held that such a net was not a fixed engine within the meaning of the Salmon Fishery Act, 1861. And Mr. Justice Lush, in giving judgment, thus distinguished the case from *Lyne v. Leonard*: "I adhere," he said, "to my decision in *Lyne v. Leonard*; but this case is distinguishable. That decision turned on the construction of sect. 36 of 28 & 29 Vict. c. 121. The respondent had laid down in a salmon fishery seventy putts, but alleged that he placed them there with the intention of catching shrimps and flat fish only. He had put some contrivance in the putts to prevent the salmon entering, which could easily be removed at any time. The justices refused to convict, on the ground that there was no evidence that the putts were there for the purpose of taking salmon, or that salmon had been caught in them. The court decided that such evidence was not necessary, because, reading sect.

(1) L. R., 6 Q. B. 226.

*Watts v.
Lucas.*

36 with sect. 33, the words that are used clearly apply to using instruments adapted for catching salmon, whether they are really used for that purpose or not. I take the justices, in the present case, to have found that the net was not a net within sect. 36. The net, then, not being an instrument used peculiarly for catching salmon, brings us back to sect. 11 of the other act, which enacts that 'no fixed engine of any description shall be placed or used for catching salmon.' Clearly the offence under this section is not in using a fixed engine, but in using it for the purpose of catching salmon."

*Result of au-
thorities.*

The rule, then, to be deduced from these two cases would seem to be, that if a person uses any of the instruments or devices mentioned in the Salmon Fishery Act, or by which salmon are or may be probably caught, the law presumes that he uses them for the purpose of taking salmon, and he accordingly requires a licence, unless he can prove that by no possibility can salmon be taken by them. If he uses any instrument or device not named in the Salmon Fishery Acts, and by which it is reasonable to suppose that salmon will not be caught, then the law presumes he is not fishing for salmon; and before he can be proceeded against for fishing for salmon without a licence it lies on the other side to prove, not that the engines were capable of taking salmon, but that the person using them was actually fishing for salmon: a matter, to use the words of

Mr. Justice Blackburn, that might be difficult to prove (*l*). It will, however, be observed that *Watts v. Lucas* (*m*) was not a decision on the question if the net required a licence or not, but whether it was or was not an illegal fixed engine, and it is not clear by any means that such a net would not require a licence.

The Salmon Fishery Act of 1865 provided that licences for fishing weirs, fishing mill dams, putts, putchers, nets or other instruments or devices should be available only for the use of the persons within the district, and in respect of the instruments and devices to whom or for whose use and in respect of which the same were respectively granted (*n*). A practice having arisen under this sub-section of persons lending their nets and licences when not using them to unlicensed persons, the point as to how far such a practice was legal in the case of a net worked by one person only as an agent or servant of the licensee never came before the courts for decision; but the question as to how far a person having a licence was entitled to have the assistance of unlicensed persons was considered by the Court of Queen's Bench in the case of *Lewis v. Arthur* (*o*). There the respondents Henry Arthur and Evan Harris were charged by the appellant for having unlawfully used a coracle net for catching salmon in the Car-

Transfer of
Licences.

Lewis v.
Arthur.

(*l*) *Lyns v. Leonard*, L. R., 3 Q. B. 158.

(*m*) L. R., 6 Q. B. 226.

(*n*) 28 & 29 Vict. c. 121, s. 34, sub-sect. 2.

(*o*) 24 L. T. (N. S.) 66.

*Lewis v.
Arthur.*

marthen Bay Fishery District without having a proper licence for the same. The magistrates stated the facts as follows:—

“ The respondents used together, it is admitted, a coracle net, which is a net that can only be used by or between two persons at the same time in coracles, and a licence of the value of 1*l.* 10*s.* is required to so use a coracle net in the said district. It appeared that there were fishing at the same time and place as the respondents two other men, named Lewis and Evans, who each held a licence in his own name of the value of 1*l.* 10*s.* Thus Lewis and Evans had two licences, while the respondents had none, at least not in their own names, at the time; but it was also proved that Evans’s licence was obtained and paid for by Arthur, with whom he had been accustomed to fish; and it was admitted, that had Arthur been fishing with him or Lewis, or had Harris been fishing with Evans or Lewis, that no offence had been committed contrary to the penal enactment in the section referred to, as the licences granted in the names of Lewis and Evans, to use each a coracle net with a partner or assistant, would have respectively protected the partner or assistant from incurring any penalty.

“ Considering, therefore, that if Evans’s licence had been granted to Arthur, who obtained it, it would have exonerated Harris; that there were but two nets used; that there were two licences with two of the fishermen authorizing the use of coracle nets, and that there was, in fact, no fraud

by the use of an extra net or otherwise; we dismissed the information against the respondents, who we held were legally assisting two licensed persons to use two coracle nets. Whereupon the appellant, being dissatisfied with our determination, as erroneous in point of law, applied for a case for the opinion of the Court of Queen's Bench."

*Lewis v.
Arthur.*

Mr. Justice Mellor, in giving judgment, said,—
"There is really nothing to negative the conclusion to which the justices have come; they thought that all were acting in the same enterprise, and they negative fraud." The court accordingly affirmed the magistrate's decision.

Any question upon the subject is now set at rest by enactment; the Salmon Fishery Act, 1873, provides that licences shall only be used by the licensee and his servants, and no person shall be regarded as a servant whose name is not indorsed upon the licence (*o*).

The following are rules as to the issuing of licences by boards of conservators:—

*Rules as to
issuing
licences.*

- (1) The board, by a bye-law, are to determine the form of licences, and the manner in which they are to be issued (*p*);
- (2) A different form must be used for licences for fishing in public fisheries and licences for fishing in private fisheries. The form is in all cases to be approved by the secretary of state (*p*);

(*o*) 36 & 37 Vict. c. 71, s. 21.
(*p*) Sect. 39.

- (3) Licences are to be distributed in such way as the conservators may direct (*q*);
- (4) Licences are only available for the open season of the year in which they are granted (*q*);
- (5) Licences are only available within the fishery district for which they are granted (*r*);
- (6) Licences for public fisheries are only available for fishing in public fisheries, and licences for private fisheries for fishing in private fisheries (*r*).

Formerly a licence was available throughout the district where it was granted, and thus there was no water in a district a licensee could not fish; now, a public licensee can only fish in public waters, and a private licensee only in his own fishery, or such other private waters as he may obtain leave.

General
licences.

- (7) Licences are of two kinds, general and special. A general licence can only be granted to the person for the time being entitled to the exclusive right of fishing at any place. It authorizes the holder and any persons he names, in writing, to fish within his fishery for salmon in any legal way, but it is of no validity beyond his fishery. The price of such a licence is to be settled by the board of conservators and the applicant, subject to the approval of the secretary of state, having regard to the

(*q*) 28 & 29 Vict. c. 121, s. 34.
(*r*) 36 & 37 Vict. c. 71, s. 21.

extent and productiveness of the fishery, and the nature of the instruments used in it (*s*).

A special licence enables the licensee to use the special engine named in it, and that engine only in the public or private fisheries of the district, according to its form. Special
licence.

(8) Licences for all fishing weirs, fishing mill-dams, putts, putchers, fixed nets, and other fixed instruments or devices, and also for moveable nets or devices, and rods and lines for catching salmon, are to be granted, if for instruments named in the Salmon Fishery Act, 1873, for such sums, not exceeding the sums there named, as the board shall fix (*t*);

(9) The scale of licence duties has in all cases to be approved by the secretary of state (*t*).

Under the Salmon Fishery Act, 1865, it was very doubtful if a board of conservators had power to charge a different sum for the same instrument in different parts of the same district: whether a net at the very top of the river should not pay the same as a net at the head of the tideway. All doubt on this point has been removed by the Salmon Fishery Act, 1873, by which— Variation of
licence duty.

(10) The board of conservators have power by bye-law to vary the rate of licence duty

(*s*) 28 & 29 Vict. c. 121, s. 34.

(*t*) 36 & 37 Vict. c. 71, s. 21.

in respect of the length and size of the net (*x*).

This would seem to refer to a power to fix a licence in regard to a particular engine.

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|--|---|
| <p>Transfer of licences.</p> <p>(1) Fixed engines.</p> | <p>(11) The board may also vary the licence duty so as to make the same instrument pay a different licence in different parts of the district, and if this is done the licensee can only fish in the part of the district specified in his licence (<i>y</i>);</p> <p>(12) Licences for the use of a rod and line may only be used by the person to whom they are granted and are not transferable (<i>z</i>);</p> <p>(13) Licences for fixed engines are available for the use of the persons to whom they are granted and for the employment of the instruments or devices named in them.</p> |
| <p>(2) Moveable nets.</p> | <p>(14) Licences for moveable instruments may be used only by the person to whom they are granted or his agents or servants, and only</p> |

So, in accordance with the decision in *Lewis v. Arthur* (*a*), the owner of a fixed engine taking out a licence to fish the engine, would be entitled to employ any servants he pleased to fish it for him, and not be limited to those whose names are indorsed on the licence. But in regard to moveable instruments other than a rod and line a different rule prevails.

(*x*) 36 & 37 Vict. c. 71, s. 39.
 (*y*) Sect. 25.
 (*z*) Sect. 21.
 (*a*) 24 L. T. (N. S.) 66.

in respect of the instruments for which they are granted. Thus, a draft net licence would not authorize the use of a hang net, or vice versâ (a);

- (15) No person is to be considered as an agent or servant unless his name is indorsed upon the licence (a); Rules as to indorsing licence.
- (16) Such indorsement can only be made by either (i) the licensee; (ii) his authorized agent; (iii) the clerk of the board of conservators; (iv) some person appointed by the board (a);
- (17) The person requiring the indorsement is to pay a fee of sixpence to the board in respect of each indorsement, if made by the clerk or person appointed by the conservators. But if the indorsement is made by the licensee or his agent, the licensee pays the sixpence (a);
- (18) Only twice the number of persons necessary to work the net or instrument may have their names indorsed on the licence at the same time, or if the licensee use or help to use the licensed instrument himself one less than twice the number (a);
- (19) The licensee may cause any name to be removed and another indorsed on paying sixpence for each new indorsement (a).

It would seem no fee is payable if a name is removed, only if a new name is indorsed.

(a) 36 & 37 Vict. c. 71, s. 21.

Approval of
licence.

- (20) No indorsement by the licensee or his agent is valid unless within twenty-four hours after it is made notice of it is sent by post to the clerk of the board or other person authorized by the board, with the fee or fees payable in respect of such indorsement, the licensee being obliged to place the date at which the indorsement is made on the licence when he indorses it (z);
- (21) No person is to be deemed the agent of a licensee for the purpose of making indorsements unless his name, address and notice of his appointment as such agent has previously to his making any indorsement been sent to the clerk or person appointed by the board to distribute licences;
- (22) Before the secretary of state approve of any scale of licence duties or the licence duty in respect of any instrument, one month's notice of the scale of duties it is the intention of the board to ask the approval of the secretary of state for must be advertised in one or more public newspapers circulating within the district (a);
- (23) Licences must be sold to all persons demanding them on their tendering the price without question or objection (a);
- (24) A licence gives the licensee no rights of fishing he did not previously possess, and

(z) 36 & 37 Vict. c. 71, s. 21.

(a) 28 & 29 Vict. c. 121, s. 34.

does not legalize or imply any recognition of the legality of the instrument licensed (*b*).

The mode of obtaining the approval of the secretary of state to a scale or the alteration in a scale of licences is as follows:—

How approval
of secretary
of state ob-
tained.

- (1) The board resolve upon the scale of licences;
- (2) A month's notice is given by advertisement in one or more newspaper or newspapers circulating within the district of the intention of the board to apply for the approval of the secretary of state to the proposed scale (*c*);
- (3) In such advertisement the proposed scale of licence duties must be stated (*c*);
- (4) The scale is then forwarded to the secretary of state, who approves or disapproves thereof—he has no power to vary or alter it; and in case he disapproves of the proposal, but agrees to a modified form, all the forms as to advertisements must be gone through again (*c*);
- (5) If he approves the scale then it becomes binding without further formality, if it is a new district or a newly licensed mode of fishing. But if it is a variation of an old scale, then (*d*)—
- (6) Notice of the new scale must be advertised by the board in a local newspaper once a

(*b*) 28 & 29 Vict. c. 121, s. 34.

(*c*) Ibid.

(*d*) 36 & 37 Vict. c. 71, s. 25.

week for four consecutive weeks before the beginning of the fishing season, and if this is not done the old scale remains in force during the next fishing season.—This does not apply to a bye-law varying the licence duty in regard to a particular net, only to a general alteration, and great care must be taken to conform to the section, or otherwise the new scale will be illegal (*e*).

Mortgage of
licences.

Commis-
sioners
Clauses Act.

In order to raise funds to meet their expenses, boards of conservators are empowered, with the consent of the secretary of state, to borrow money on the security of their licence duties, and for that purpose to mortgage them to the person advancing the money. For this purpose sections 75 to 88 of the Commissioners Clauses Act, 1847 (*f*), are incorporated with the Salmon Fishery Acts. These sections provide that the mortgage must be by deed under the common seal of the board, and may be in the form contained in the schedule to that act (*g*). A register of all mortgages made by the board must be kept by the clerk, open at all times to the inspection of any person interested (*h*). Every transfer of any mortgage is to be by deed, and may be in the form given in the schedule (*i*). A register of the trans-

(*e*) 36 & 37 Vict. c. 71, s. 25.

(*f*) 10 Vict. c. 16.

(*g*) Sect. 75.

(*h*) Sect. 76.

(*i*) Sect. 77.

fer of all mortgages is to be kept (*k*). The interest on the mortgages is to be paid half-yearly (*l*). The boards are authorized to borrow money at a lower rate to pay off interest at a higher (*m*). They may fix upon a particular time and place to pay off the mortgage (*n*); but if none is fixed on, either party may require it to be paid off on giving six months' notice (*o*). The payment of interest is to cease on the expiration of the notice to pay off, unless the board make default in payment (*p*). A twentieth part of the debt, if no other part is prescribed, is to be annually invested in the purchase of exchequer bills or government securities to form a sinking fund (*q*). If the board can pay off one mortgage, and not the whole of their debts, they are to decide by lot which they will pay off (*r*). Payment of arrears of principal and interest may be enforced by the appointment of a receiver (*s*). The receiver is to be appointed by two magistrates (*t*). The licence books of the board are to be open to the inspection of the mortgagees (*u*).

(*k*) 10 Vict. c. 16, s. 78.

(*l*) Sect. 79.

(*m*) Sect. 80.

(*n*) Sect. 81.

(*o*) Sect. 82.

(*p*) Sect. 83.

(*q*) Sect. 84.

(*r*) Sect. 85.

(*s*) Sect. 86.

(*t*) Sect. 87.

(*u*) Sect. 88.

The clauses will be found in full in the Appendix.

Additional
licence duty.

For the purpose of defraying the expenses incident upon any improvements for the purpose of facilitating the passage of salmon, with the sanction of the secretary of state, the board may levy an additional licence duty; but such duty must not exceed twenty-five per cent. upon the ordinary duty in force in the district. The additional duty is to be paid at the same time as the ordinary duty, and is to be deemed a part of it; and no licence granted without the payment of both ordinary and additional duty, if any, will be valid (y).

Rules as to
imposing ad-
ditional
licence duty.

Before the additional duty can be imposed a month's notice of the intention to impose it must be given by advertisement in one or more local newspapers. Such advertisement must specify the amount intended to be imposed and the estimate upon which the amount is based. The clerk is to keep the estimate, and it is to be open for the inspection of any riparian owner, previous licence payer, or person entitled to vote, not only at the clerk's office, but at such places as the board may appoint, before the commencement of each fishing season (y).

It will be seen from this that a board has power to increase all their licences a quarter as much again

(y) 36 & 37 Vict. c. 71, s. 57.

as the maximum in the schedule for the following purposes:—

- (1) Purchasing a weir dam, fixed engine, fishing weir, or fishing mill-dam by agreement;
- (2) Purchasing a weir dam, fishing weir, fishing mill-dam, fixed engine, or obstruction compulsorily under the provisions of the 49th section of the Salmon Fishery Act, 1873;
- (3) Making a fish pass under the 23rd section of the Salmon Fishery Act, 1861;
- (4) Purchasing a piece of the bank adjoining a weir for the purpose of making a fish pass under sect. 50 of the Salmon Fishery Act, 1873;
- (5) Altering any existing fish pass under the provisions of the 32nd section of the Salmon Fishery Act, 1865;
- (6) Making a fish pass by agreement in any weir, dam or fishing mill-dam;
- (7) Purchasing land by agreement to make a fish pass;
- (8) Doing any other act for the purpose of facilitating the passage of salmon.

Although the section refers to improvements made or about to be made, it would seem doubtful if it has any retrospective operation, and only refers to improvements made after the passing of the Salmon Fishery Act, 1873.

A licensee under the acts, upon producing his licence, has the same powers that a water bailiff has to compel a person found fishing to produce

Power of
licensee on
producing
his licence.

his licence; and if such person refuse to do so he is liable to the same penalties as if he had been required by a water bailiff to produce it (a).

Statutes as to Licences.

Issue of
licences.

In any fishery district subject to the control of a board of conservators licences shall be granted at fixed prices to all persons using any rod and line for fishing for salmon; and in respect of all fishing weirs, fishing mill-dams, putts, putchers, nets or other instruments or devices, except rods and lines, whereby salmon are caught; and the produce of such licences shall be applied in defraying the expenses of carrying into effect in such district the Salmon Fishery Acts, 1861 to 1873 (b).

The conservators of a district shall, on their first appointment, give notice, by advertisement in one or more newspaper or newspapers published or circulating in their district, of a time, not being less than three months after such appointment, at the expiration of which it will be illegal to fish for salmon in that district without a licence, and shall state in the notice a place or places within their district where licences may be procured; and the production of a copy of a newspaper containing any such advertisement as aforesaid shall be conclusive evidence, as respects a fishery district, of due notice having been given of the time after which it will be illegal in that district to fish for salmon without licences (c).

Penalty on
fishing with
rod without
licence.

In a fishery district, any person fishing in that district with a rod and line for salmon without a proper licence shall be liable to a penalty of not less than double the amount to be paid for the requisite licence, and not exceeding five pounds (d).

Penalty on

In a fishery district, any person using within that district any

(a) 28 & 29 Vict. c. 121, s. 37.

(b) Sect. 33.

(c) Sect. 34, sub-sect. 8.

(d) Sect. 35.

fishing weir, fishing mill-dam, putt, putcher, net or other instrument or device, not being a rod and line, for catching salmon, without having a proper licence for the same, shall be liable to a penalty of not less than double the amount to be paid for the requisite licence, and not exceeding twenty pounds (e).

fishing at weirs or with nets without licence.

In all fishery districts in which licences are payable under the provisions of the Salmon Fishery Acts, 1865 or 1873, any person fishing for, taking, killing, or attempting to take or kill, salmon by any means whatsoever other than a properly licensed fishing weir, fishing mill-dam, fixed engine, instrument, net or device for catching or facilitating the catching of salmon, or assisting any such person in so doing, shall be liable to a penalty not exceeding five pounds, and a further penalty of not exceeding one pound in respect of each salmon so caught: provided that this section shall not prevent the use of a gaff or landing net as auxiliary to any holder of a rod licence angling with a rod and line (f).

Penalty on taking salmon without a licence.

A board of conservators are by bye-law to determine the form of licence and the manner in which licences shall be issued, provided that different forms be used for licences for fishing in public or common, and in private fisheries (g):

Licences granted in pursuance of the Salmon Fishery Acts shall be issued by the conservators of each district in such form as may be approved by the secretary of state, and be distributed in such manner as they may from time to time direct (h).

The following rules shall be observed with respect to the licences granted in pursuance of the Salmon Fishery Acts; that is to say,

Rules as to licences.

All licences granted in pursuance of these acts shall be available only during the fishing season of the year for which they are granted (i);

Licences shall only be available within the fishery district for which they are granted. Licences granted for public or common fisheries shall be available only for such

(e) 28 & 29 Vict. c. 121, s. 36.

(f) 36 & 37 Vict. c. 71, s. 22.

(g) Sect. 39.

(h) 28 & 29 Vict. c. 121, s. 34.

(i) Ibid.

fisheries. Licences granted for private fisheries shall not be available in public or common fisheries, except licences for the use of a rod and line (i);

Any person for the time being entitled to an exclusive right of fishing for salmon in any river or part of a river may, upon application to the conservators of the district, obtain a general licence; and such general licence shall enable the licensee, or any person authorized by him in writing under his hand, without any other licence, to fish for salmon in any legal manner in such river or part of a river, but it shall not be of any validity beyond the limits to which it refers; there shall be paid for such general licence such sum as the conservators may from time to time determine, with the sanction of the said secretary of state, having regard to the extent and productiveness of the fishery, and to the nature of the instruments or devices used for catching the fish (k);

Licences for fishing weirs, fishing mill-dams, putts, putchers, fixed nets, and other fixed instruments or devices, and for moveable nets and other moveable instruments or devices, and also for rods and lines for catching salmon within a fishery district, shall be granted on payment of such sums not exceeding (l)—

For each and every—		£ s. d.		
"	Weir, hang, baulk, garth, goryd, box, crib, or cruive	12	0	0
"	Draft or hang net, not exceeding 200 yards in length measured along the head-rope when wet	5	0	0
"	Ditto, exceeding 200 yards, for every additional 40 yards or part thereof	1	0	0
"	Coracle net	2	5	0
"	Putt	0	3	6
"	Outrigger or leader to putts and putchers, not exceeding 100 yards in length	2	0	0
"	Ditto, exceeding 100 yards, for every additional 20 yards or part thereof	1	0	0

(i) 36 & 37 Vict. c. 71, s. 21, sub-sect. 2.

(k) 28 & 29 Vict. c. 121, s. 34.

(l) 36 & 37 Vict. c. 71, s. 21.

For each and every—	£	s.	d.
„ Cross line	2	10	0
„ Single rod and line	1	10	0
For putchers or butts, if not exceeding 50 in number	1	10	6
For every additional 50 or part thereof	1	10	6

For any instrument or device not named above, such sum as may be determined by the board of conservators, with the sanction of the secretary of state (m)—

as the board of conservators of the district, with the sanction of the secretary of state, may from time to time determine (n);

The approval of the said secretary of state to a scale of licences for fishing weirs, fishing mill-dams, putts, putchers, nets, and other instruments or devices as aforesaid, shall not be given for any district unless one month's previous notice of the intention of the board to apply for such approval has been given by advertisement, stating the scale of licence duties proposed by the conservators, in some one or more public newspaper or newspapers circulating in the district (o);

The board of conservators are by bye-law empowered to vary the rate of licence duty in different parts of the district, in respect of the length or size of the net used, so that such duty shall not exceed the above-mentioned sums (p). Board may vary licence duty by bye-law.

The board of conservators may, with the consent and approval of the secretary of state, from time to time vary the licence duties leviable within their district, and vary the licence duties leviable on similar instruments in different parts of the district, specifying in the licences the portions of the rivers in which the said licensed instruments may be used, so, however, that the licence duties so varied shall not exceed the sums above mentioned: provided, that in the event of any variation in the said scale of licence duties being agreed upon, the board shall cause notice thereof to be given by advertisement in one or more local newspapers not less than once in each week for four consecutive Board may vary licence duties with the approval of the secretary of state.

(m) 36 & 37 Vict. c. 71, 3rd Schedule.

(n) Sect. 21, sub-sect. 1.

(o) 28 & 29 Vict. c. 121, s. 34.

(p) 36 & 37 Vict. c. 71, s. 39.

weeks before the commencement of the next fishing season respectively; and if from any mistake or error or any other cause such variation shall not have been duly made and published, the scale of licences in force during the preceding year shall be deemed to be in force for all purposes whatsoever, and shall so continue until it shall be duly altered or varied under the provisions of the Salmon Fishery Act, 1873(*n*).

A licence for the use of a rod and line shall be used only by the person to whom it is granted, and shall in no case be transferable (*o*).

Licences for
fixed nets.

Licences for fishing weirs, fishing mill-dams, putts, putchers, fixed nets, and other fixed instruments or devices for catching salmon, shall be available only for the use of the persons to whom they are granted, and for the employment of such instruments and devices as are named and described therein (*p*).

Licences for
moveable
nets.

Licences for moveable nets or other moveable instruments or devices for catching salmon shall be used only by the person to whom they are granted, or his agents or servants, and in respect of the instrument for which they are granted, and no person shall be deemed to be an agent or servant of a licensee for the purposes of fishing, unless his name is endorsed on the licence, either by the licensee or his authorized agent, or by the clerk or other persons authorized by the conservators; and the conservators shall make arrangements for facilitating the endorsement of the names of agents or servants of licensees by their clerk or other persons authorized as aforesaid. A fee of sixpence shall be payable to such clerk or other person authorized as aforesaid in respect of the endorsement of the name of any agent or servant on a licence, in pursuance of this section, by any person requiring the same, if made by the clerk or other person authorized by the conservators, or by the licensee in case of the endorsement being made by him or his authorized agent. A licensee shall not be entitled to have endorsed on his licence the names of agents

Rules as to
endorsement.

(*n*) 36 & 37 Vict. c. 71, s. 25.

(*o*) Sect. 21, sub-sect. 5.

(*p*) Sect. 21, sub-sect. 3.

or servants exceeding twice the number of persons required to work at one time the net, instrument or device in respect of which the licence is granted. Any licensee may from time to time remove or cause to be removed the name of any agent or servant from his licence, and, if he so desire, may substitute or cause to be substituted the name of another agent or servant, on payment of a like fee for the name of each person so substituted; but no endorsement made by the licensee or his authorized agent shall be valid unless a copy thereof shall, within twenty-four hours from the date thereof, which date shall be inserted on the licence at the time of making such endorsement as aforesaid, be sent by post to such clerk or other person authorized as aforesaid, accompanied with such fee or fees as are payable under this section in respect of such endorsement; and no person shall be deemed to be an authorized agent of the licensee for the purposes of this sub-section unless his name and address and notice of his appointment as an authorized agent shall have been sent by post to the clerk or other person authorized by the conservators previously to any endorsement being made by such authorized agent: provided always, that if a licensee at any time during a fishing season, either works or assists in working a moveable net or other moveable instrument or device himself, the number of names which he shall be entitled to have endorsed on the licence for such moveable net or other moveable instrument or device shall be one less than twice the number of persons required at one time to work such moveable net, instrument or device. Any licensee or authorized agent of a licensee who fraudulently endorses on the licence more names than he is entitled to have endorsed thereon, or who endorses thereon any date other than the actual date of the making of such endorsement, shall be liable on conviction thereof to a penalty not exceeding twenty pounds (*q*) for the first offence; not less than two pounds ten shillings nor more than twenty pounds for the second; not less than five

Rules as to
endorsement.

(*q*) 36 & 37 Vict. c. 71, s. 21.

pounds nor more than twenty pounds for the third; and not less than twenty pounds for the fourth.

Sale of
licence.

All persons demanding to purchase licences, and tendering to any person appointed by the board to distribute the same the amount of licence duty to be paid under the provisions of the Salmon Fishery Acts, shall be entitled to receive the same without any question or objection whatsoever. But no licence shall confer any right to fish in any place or at any time in or at which the licensee is not otherwise entitled to fish; nor shall the grant of a licence be held to make any fishing weir, fishing mill-dam, putts, putchers, net or other instrument or device legal that would otherwise be illegal, or to imply any recognition of the legality of any such instrument (s).

Mortgage of
licence duties.

A board of conservators may, for the purpose of defraying any costs, charges and expenses incurred or to be incurred by them under the Salmon Fishery Acts, 1861 to 1873, with the consent of one of her Majesty's principal secretaries of state, borrow and take up at interest on the credit of the licence duties authorized to be imposed by them, or of any other property belonging to them, any sums of money necessary for defraying such costs, charges and expenses; and for the purpose of securing the repayment of any sums of money so borrowed, together with such interest as aforesaid, the board of conservators may mortgage and assign over to the persons by or on behalf of whom such sums are advanced the said duties and property, or any part thereof; and the clauses of the Commissioners Clauses Act, 1847, with respect to mortgages to be created by the commissioners, shall form part of and be incorporated with this act (t); and any mortgagee or assignee may enforce payment of his principal and interest by appointment of a receiver (u).

Production of
licence.

Any licensee under this act on producing his licence, any conservator on producing a certificate of his being a conservator, or any water bailiff appointed in pursuance of this act on producing the instrument appointing him, or any constable, if authorized so to do by the justices in quarter sessions, may require any per-

(s) 24 & 25 Vict. c. 121, s. 34, sub-sect. 5.

(t) See these clauses, post, in the Appendix.

(u) 28 & 29 Vict. c. 121, s. 28.

son found fishing with a rod and line, fishing weir or fishing mill-dam, net, or other instrument, to produce his licence; and the person required to produce the same shall, if he do not produce the same, or make a reasonable excuse for the nonproduction thereof, be liable to a penalty not exceeding one pound for the first offence, not less than one pound and forfeiture of licence for the second and subsequent offences.

In addition to the licence duties authorized to be levied in a fishery district, the board of conservators may from time to time, with the sanction of the secretary of state, for the purpose of defraying the charges of any improvements made or about to be made for the purpose of facilitating the passage of salmon, levy additional licence duties throughout the district, not exceeding in any one year twenty-five per cent. of the sum paid by each person respectively, and the said additional duty shall be payable as and in addition to the ordinary licence duty, and shall for all the purposes of the Salmon Fishery Acts be deemed part of the ordinary licence duty, and no licence granted after the passing of this act without payment of such additional duty, if any, as well as the licence duty applicable thereto, shall be valid: provided that notice shall be given by the board, by advertisement in one or more local newspapers, one calendar month before the commencement of each fishing season, of the amount of such additional duty to be paid in addition to the ordinary licence duties in force in each district. And the estimate on which such additional duty is founded shall be kept by the clerk or other officer of the board, and be open to the inspection of all previous licence payers, riparian owners, and persons entitled to vote within the district, at reasonable times and places to be appointed by the board before the commencement of each fishing season (x).

Board may
levy addi-
tional duty
for perma-
nent im-
provements.

(x) 36 & 37 Vict. c. 71, s. 57.

CHAPTER VII.

DAMS, WEIRS AND FISH PASSES.

Definition of
dam.

THE Salmon Fishery Act, 1861 (*a*), defines the word dam to mean "all weirs and other fixed obstructions used for the purpose of damming up the water." If they have anything to do with fishing, being used either for the purpose of catching or of facilitating the catching of fish, they then fall under the head of either fishing weirs or fishing mill-dams. The law as to these kinds of dams will be found in a subsequent chapter (*b*); the present is confined to the ordinary case of a dam or weir used for supplying water to mills, inland navigation, or for any other purpose.

Duties of
conservators
as to dams.

As all dams obstruct the passage of salmon, one of the chief duties of boards of conservators is to facilitate the passage of salmon over dams or weirs (*c*), and to enable this to be done the Salmon Fishery Acts have given them very extensive powers.

In regard to these powers weirs must be divided into two classes, those erected or altered since the 6th August, 1861, and those erected prior to that date.

(*a*) 24 & 25 Vict. c. 109, s. 4.

(*b*) Chapter IX., Sects. 3 and 4, pp. 272—334.

(*c*) 28 & 29 Vict. c. 122, s. 27.

As to the first class, there is no law to prevent any person erecting a weir in a non-navigable river, provided he does not by so doing injure his neighbours, either above the weir by flooding or damaging their lands, or below it by diminishing their supply of water or preventing the ascent of fish.

Weirs erected since 6th August, 1861.

Of course no such weir could be used for fishing, as the Salmon Fishery Act, 1861, forbids any dam to be used for fishing not so used on the 6th August, 1861 (*d*); and it would have to comply with the requirements of the Salmon Fishery Acts as to fish passes (*e*). But if these are complied with there is nothing to prevent any one building a weir in a non-navigable river, and after twenty years' user the owner of the weir would have, under the Prescription Act (*f*), acquired a right to its use, even if it prejudiced his neighbours. This is expressly stated by Lord Chief Justice Cockburn: "Though weirs in navigable rivers are illegal, unless they existed before the time of Edward I., such an easement may be acquired in private waters by grant from other riparian owners, or by enjoyment, in short, by any means by which such rights may be constituted" (*g*). The case of *Weld v. Hornby* (*h*), and a dictum of Lord Ellenborough in that case, have frequently been cited and relied upon to establish the contrary proposition that a weir in a non-navigable river is a public nuisance,

Any person can erect a weir in a non-navigable river.

(*d*) 24 & 25 Vict. c. 109, s. 11.

(*e*) 24 & 25 Vict. c. 109, s. 23; 36 & 37 Vict. c. 71, s. 46.

(*f*) 2 & 3 Will. 4, c. 71.

(*g*) *Rolle v. Whyte*, L. R., 3 Q. B., at p. 302.

(*h*) 7 East, 195.

*Lord Lecon-
field v. Lord
Lonsdale.*

and therefore illegal. This proposition, if it ever was law, is no longer so, as it has been expressly overruled by the Court of Common Pleas. Lord Chief Justice Bovill, in delivering the considered judgment of the court in *Lord Leconfield v. Lord Lonsdale* (e), said, "We see no ground for saying that a coop (that is, a kind of weir) that is not in a public navigable river can be treated as a nuisance. The supposed authorities which were cited do not appear to us to make out any such proposition, and the passage in the 2nd Institute involves the contrary. The case of *Weld v. Hornby* (f), which was relied upon on this point, did not raise any such question. It was an action for a private nuisance, and unquestionably maintainable in respect of the plaintiff's private right of property, which was injured by the act of the defendant in making his weir more impervious to fish, and so preventing them from arriving at the plaintiff's fishery, a grievance long recognized as giving a right of action, independent of any question of public nuisance; see the precedent in the last case of Year 46, Lib. As."

"The dictum of Lord Ellenborough must be read as assuming that the river was public; and the marginal note to the report of the case in 3 Smith, 244, expressly refers to it as a public river. Its turning out upon inquiry not to be so in fact, at the point where the weir actually was, only shows that Lord Ellenborough was mistaken as to the

(e) L. R., 5 C. P. 657.

(f) 3 Smith, 244.

fact, or that his attention was not at the moment directed to its importance. The dictum was unnecessary to the decision of the case, and is outweighed by the authority of Coke and Glanville. At the same time, it is proper to observe that the opinion thus extrajudicially thrown out has led to much misapprehension, which even the judgment of the Court of Queen's Bench in *Rolle v. Whyte* does not appear to have quite corrected" (g).

In regard to a public navigable river the case is different: there no weir can be now erected without the authority of parliament; and any weir that was not in existence before the time of Edward I., and therefore legalized by the statute 25 Edw. 3, st. 4, c. 4 (h), is now *prima facie* illegal. This was distinctly laid down by the Court of Queen's Bench in *Rolle v. Whyte* (i). The Lord Chief Justice Cockburn, after an elaborate consideration of the authorities and statutes, stated the law to be that weirs in navigable rivers are illegal unless they existed before the time of Edward I. (i).

The regulations the Salmon Fishery Acts, 1861 to 1873, lay down as to weirs built after the 6th of August, 1861, whether in navigable or non-navigable rivers, are as follows:—

- (1) Every person who, in waters where salmon are found,—
 - (a.) Constructs a new dam;

(g) L. R., 5 C. P., at p. 726.

(h) *Chester Mill case*, 10 Rep. 137b; *Williams v. Willcox*, 8 A. & E. 314.

(i) L. R., 3 Q. B. 286.

Weirs in
navigable
rivers.

Regulations
of the Salmon
Fishery Acts
as to new
weirs.

Rules as to
new weirs.

- (b.) Raises or alters a dam already constructed so as to create increased obstruction to fish (*k*);
- (c.) Rebuilds a weir or dam to the extent of half its length (*l*);
- (d.) Reinstates a weir which has been taken down or destroyed to the extent of half its length (*l*);
- (e.) Has, since the 6th August, 1861, created, caused or increased any obstruction to the passage of salmon (*l*);
- (f.) Shall hereafter create, cause or increase any obstruction to the passage of salmon (*l*);

must make and maintain in an efficient state a fish pass of such form and dimensions as the secretary of state may approve;

- (2) If such person fail to make such fish pass, he is liable to a penalty of not exceeding 20*l.* for the first offence; of not less than 2*l.* 10*s.* nor more than 20*l.*, and a penalty not exceeding 2*l.* a day for each day during which he shall make default for the second offence; of not less than 5*l.* and not exceeding 20*l.* and not less than 2*l.* a day for the third (*l*);
- (3) The secretary of state may authorize the pass to be made in case the owner fails to

(*k*) 24 & 25 Vict. c. 109, s. 25.

(*l*) 36 & 37 Vict. c. 71, s. 46.

make it, and can recover the expense of making it from the owner or occupier in a summary way before two justices (*m*);

Rules as to
new weirs.

- (4) But the passes made under these powers are not injuriously to affect any navigable river, canal or inland navigation, public water-works, dock or docks, the supply of water to which is obtained from any navigable river, canal or inland navigation under the authority of any act of parliament (*n*);
- (5) These powers are not to prevent any person removing a fish pass for the purpose of repairing or altering any dam, if it is restored in as effectual a state as it was before within a reasonable time (*o*);
- (6) The owner or occupier of any weir, dam or obstruction is, for the purpose of making the fish pass, to be deemed the person who built or reinstated the weir, or caused or increased the obstruction (*p*).

In regard to weirs in existence on the 6th day of August, 1861 :—

Rules as to
weirs in ex-
istence in
August, 1861.

- (1) If they are rebuilt more than half the length, or if they are so altered as to offer increased obstruction to the passage of salmon, they then become new weirs, and the above provisions apply (*q*);

(*m*) 24 & 25 Vict. c. 109, s. 25.

(*n*) 36 & 37 Vict. c. 76, s. 46.

(*o*) Ibid.

(*p*) Ibid.

(*q*) Ibid.

- Purchase of weirs:
i. Voluntarily.
- ii. Compulsorily.
- Steps to be taken.
- (2) But if they remain in the same state they then were, the board of conservators have to determine whether they will buy the weir or place a fish pass over it;
 - (3) If they determine to buy the weir, they can do so by agreement with the owner, but they must then remove the whole weir, the powers of purchase by agreement given to the board being only for the purpose of removal(*r*);
 - (4) If the owner is either unwilling or unable to sell, or they cannot agree on the terms of purchase, they can, by taking the following steps, obtain compulsory powers of purchase under the Lands Clauses Consolidation Act(*s*):—
 - (a.) Having determined to purchase, they must give notice of their intention of applying for compulsory powers to the owner and occupier;
 - (b.) One month after the notice has been given, the board must present a petition to the secretary of state asking for leave to purchase the weir and premises used in connection therewith, on the ground of the advantage it will be to the fisheries of their district;
 - (c.) The secretary of state may require the board to produce any evidence

(*r*) 28 & 29 Vict. c. 121, s. 27.

(*s*) 36 & 37 Vict. c. 71, s. 49.

he may think fit in support of the petition ;

Steps to be taken on compulsory purchase.

- (d.) Before taking the petition into consideration the secretary of state must require the board to prove two things—

(1) That notice has been given to the owner and occupier ;

(2) That they have sufficient funds in hand to complete the purchase and pay the consequent expenses ;

- (e.) The secretary of state, on being satisfied on these points, must take the petition into consideration, and may either dismiss the same at once, or

- (f.) Inquire into the propriety of granting the prayer ;

- (g.) If after inquiry he is of opinion that the board should be allowed to purchase the weir compulsorily, he issues his order authorizing them to put in force the powers of the Lands Clauses Consolidation Act with respect to the purchase of lands otherwise than by agreement, with any conditions or modifications he may think fit ;

- (h.) The board are then to serve a copy of the secretary of state's order on the owner and occupier ;

- (i.) The provisional order is then to be confirmed by act of parliament.

- (j.) After confirmation the board will be regarded as the promoters of an undertaking to remove the weir (*t*).

Steps to be taken under the Lands Clauses Consolidation Act.

Having got the order confirmed by parliament, the board will then have to take the steps required by the Lands Clauses Consolidation Act for the purchase of lands otherwise than by agreement; these are—

- (1) Give notice to the persons enabled by the Lands Clauses Consolidation Act to sell and convey the weir, or such of them as they can find (*u*);
- (2) The notice must state (i.) the particulars of what the board propose to take, (ii.) that they are willing to treat for the purchase, (iii.) the amount they are prepared to pay (*u*);
- (3) The notice must be left at the last usual place of abode of each owner; if they are absent from the United Kingdom, with the occupier, or if no occupier, posted up on the lands (*x*).
- (4) If twenty-one days after the notice is served the owner fail to give the board particulars of his claim, or if they cannot agree as to price, the amount is to be settled in the following ways (*y*):

If under 50*l.* by two justices ;

(*t*) 36 & 37 Vict. c. 71, s. 49.

(*u*) 8 Vict. c. 18, ss. 18 and 31.

(*x*) Sect. 19.

(*y*) Sect. 21

If over 50*l.* by arbitration or by a jury, at the option of the vendor (*z*);

- (5) If the vendor is found by the jury or by the arbitration to be entitled to a greater sum than the board have offered, then they pay the costs of the inquiry; if the same, or a less sum, then each party bear their own costs (*a*);
- (6) The purchase-money will include not only the actual amount paid for the purchase, but also compensation for any damages incurred by taking the weir, and also for any property that may have been injuriously affected (*b*).

It should here be pointed out that under the provisions of the Lands Clauses Act the board will not be able merely to purchase the weir or part of the weir; that act provides that no one shall be compelled to sell a part only of any building or manufactory (*c*), and these words have received a very wide interpretation by the courts; a recent case (*d*), though not going so far as the law has been carried in some instances, will show the construction the courts put upon the section. The Midland Railway Company proposed to cross by a bridge a weir and the River Don, situated at some distance from a manufactory for which the

Sale of part
of manufac-
tory.

*Furniss v.
Midland
Railway
Company.*

(*z*) 8 Vict. c. 18, ss. 22 and 23.

(*a*) Sect. 34.

(*b*) Sect. 21.

(*c*) Sect. 92.

(*d*) *Furniss v. The Midland Railway Company*, L. R., 6 Eq.

weir was maintained. For this purpose they required to purchase among other property part of the weir and part of the bed of the river for the purpose of erecting the bridge. The owners of the manufactory refused to sell these parts, and insisted that the railway company were bound to take the whole; and the court held they were bound so to do (*d*).

Lands inju-
riously af-
fected.

Another point boards of conservators before resorting to their powers will have carefully to consider is, how far the removal by them of any weir under these powers will "injuriously affect" any lands or interest therein, either above or below the weir. There is no more doubtful point in the whole of the law than when land is and when not injuriously affected by any works (*e*). To quote the words of Lord Westbury, "It is painful to observe the number of conflicting decisions on the law of compensation by railway companies. It is impossible to reconcile these decisions by any sound distinctions, and the result is that to a great extent they neutralize each other. It is distressing to be told (as we are in the case before us) that the Court of Exchequer in *Senior v. The Metropolitan Railway Company*, and the Court of Common Pleas in *Cameron v. The Charing Cross Railway Company*, founded their judgment on the supposed effect of the

*Ricket v. The
Metropolitan
Railway
Company.*

(*d*) *Furniss v. The Midland Railway*, L. R., 6 Eq. 473. See also as to this section, *Sparrow v. The Oxford, &c. Railway Company*, 9 Hare, 436; 2 D., M. & G. 94; *Spackman v. The Great Western Railway Company*, 1 Jur., N. S. 790

(*e*) 8 Vict. c. 18, s. 68.

judgment given by the Court of Exchequer Chamber so recently as the year 1863, in the case of *Chamberlain v. The London and Crystal Palace Railway Company*, but that both the Common Pleas and the Court of Exchequer did not understand the judgment on which they so relied. It is a striking example of the uncertainty of the law which rests on judicial decisions" (f). Such being the state of the law it would be useless to cite cases to show what is and is not an injurious affecting of lands. But boards of conservators when embarking upon their compulsory powers of purchase must be prepared to find themselves involved in a sea of long and costly litigation, as to how far the removal of any weir injuriously affects any lands within the meaning of the 68th section of the Lands Clauses Consolidation Act.

- (k.) When the board have bought the weir or dam, they are to remove it in whole or in part, so as to enable salmon to pass more freely (g);
- (l.) The part of the weir through which the salmon pass will remain vested in the board, but the residue is to be deemed superfluous lands, and will have to be sold by the board (g);
- (m.) The lands must be first offered for sale to the person from whom they were bought,

Proceedings
after pur-
chase.

(f) Per Lord Westbury, *Ricket v. The Metropolitan Railway Company*, L. R., 2 H. L., at p. 201.

(g) 36 & 37 Vict. c. 71, s. 49.

then to the adjoining landowners, and afterwards to the public (*h*);

- (n.) If not sold within ten years from the time fixed for the completion of the purchase of the weir, the lands will vest in the owner of the adjoining lands (*h*).

The board have no power to purchase compulsorily any weir constructed under any act of parliament, either for the purpose of improving the navigation of any river, or of supplying any towns with water (*i*).

Fish passes.

If the board determine not to purchase, they can make a fish pass in any weir or in the adjoining bank.

Steps to be taken by a board on making a fish pass.

The steps to be taken by a board of conservators in regard to attaching fish passes are as follows:—

- (1) They must, within a reasonable time before the application, serve a notice on the owner of the dam of their intention to apply to the Home Office for leave to make a fish pass, of such form and dimensions as the Home Office shall approve (*h*);
- (2) With such notice they must give the owner a copy of the plan and specification of the proposed fish pass (*h*);
- (3) Proof of the service of the notice and plan must be given to the secretary of state at the time of the application (*h*);

(*h*) 8 Vict. c. 18, ss. 127, 128.

(*i*) 36 & 37 Vict. c. 71, s. 49.

(*h*) 24 & 25 Vict. c. 109, s. 24.

- (4) The Home Office are to hear any objection the owner of the dam has to urge before they sanction the proposed fish pass ^{Steps to be taken on making a fish pass.} (l);
- (5) The Home Office may then sanction the making of a fish pass, of such form and dimensions as they shall approve (m);
- (6) No injury is to be done by such fish pass to the milling power, or to the supply of water to any navigable river, canal, or inland navigation by such fish pass (m);
- (7) Obstructing any persons in making a fish pass (after its erection has been sanctioned by the Home Office), or in doing any necessary act to maintain it, renders such person liable to a penalty of not exceeding 10*l.* for the first act of obstruction; not less than 2*l.* 10*s.* nor more than 10*l.* for the second; not less than 5*l.* nor more than 10*l.* for the third, not less than 10*l.* for the fourth (m). If the injury to the fish pass be done maliciously, such person would be liable to penal servitude under the provisions of the Malicious Injury to Property Act;
- (8) If any person injures any fish pass he is liable to the cost of making good the injury, the cost to be recovered in a summary manner before two justices. And if

(l) 24 & 25 Vict. c. 109, s. 24.

(m) Sect. 23.

the injury is wilful, to a penalty not exceeding 5*l.* for the first offence; not less than 2*l.* 10*s.* nor more than 5*l.* for the second; not less than 5*l.* for the third (*n*);

- (9) If affixing the fish pass causes any injury to the dam, the board, if proceedings are taken within two years from the date at which the fish pass was affixed, are liable to compensate the owner of the dam (*o*).

Power to purchase land adjoining weir to make a fish pass.

If the board are unable for any reason to make a fish pass in the dam, they may apply to the secretary of state for leave to purchase so much of the bank adjoining the dam as may be necessary for the purpose of making a fish pass (*p*). And all the steps above enumerated as required to be taken on the purchase of a dam will have to be gone through for the purchase of the bank. The Salmon Fishery Acts give no power to a board to purchase a piece of land voluntarily for the purpose of a fish pass.

Obstructing fish passing through fish passes.

If when any fish pass is made in a dam, whether approved by the Home Office or not, if any person does any act whereby fish are obstructed, or liable to be obstructed in using it, or that makes the fish pass less efficient; or if he alters the bed or banks of the river so as to make it less efficient, or uses any contrivance, or does any act whereby

(*n*) 36 & 37 Vict. c. 71, s. 48.

(*o*) 28 & 29 Vict. c. 121, s. 59; 36 & 37 Vict. c. 71, s. 54.

(*p*) 36 & 37 Vict. c. 71, s. 50.

fish are in anywise liable to be either scared, hindered or prevented from passing through the fish pass, he is liable to a penalty of not exceeding 5*l.* for the first offence, and the expense of restoring the fish pass to a state of efficiency; of not less than 2*l.* 10*s.* for the second and not exceeding 5*l.*, and a penalty of not exceeding 1*l.* a day for every day during which the alteration, obstruction or contrivance is continued, dating from the date of the second conviction; and to a penalty of not more than 5*l.* and not less than 1*l.* a day for every day during which the obstruction is continued for the third and every subsequent offence (*g*).

If a fish pass has been made before the 5th August, 1873 (the date of the passing of the Salmon Fishery Act, 1873), in any weir, and has been approved by the secretary of state, it is to be deemed a fish pass within the meaning of the Salmon Fishery Acts, 1861 to 1873 (*r*). This provision was rendered necessary to avoid weir owners being put to the expense or trouble of having two fish passes made in their weirs; for, before the Salmon Fishery Act, 1873, boards of conservators had no power to put in fish passes as boards; and if a fish pass had been erected by a board of conservators, and approved by the secre-

Secretary of state may approve existing fish passes.

(*g*) 36 & 37 Vict. c. 71, s. 48.

(*r*) Sect. 52.

tary of state, there was nothing to prevent a proprietor of a fishery applying to the Home Office for leave to put up a second pass in the same weir. Again, several of the penalties as to injuring fish passes, and obstructing fish passing through them, only applied to fish passes put up by a proprietor of a fishery with the sanction of the secretary of state. The object of the clause was, therefore, to place all fish passes under the same law. Power is also given to the secretary of state to approve, if he is of opinion it is efficient in all respects and for all purposes, of any fish pass, by whoever constructed. Before the act of 1873 he could only approve of fish passes constructed by a proprietor of a fishery (s).

Alteration of
fish pass.

If, when a fish pass has been made, the board of conservators are of opinion that it could be improved, on their application setting forth the facts, the secretary of state may direct any alteration to be made in it, or a new fish pass to be made upon another site, all costs, charges and expenses of the alteration or erection being borne by the board. And for the purposes of this alteration, if a river is divided into separate branches, each branch is to be deemed a separate river. But no alteration must do any injury to the supply of water to any navigable river, canal or inland navigation (t)

(s) 36 & 37 Vict. c. 71, s. 52.

(t) 28 & 29 Vict. c. 121, s. 32.

In order to secure a proper supply of water to fish passes, the sluices which draw off the water, that would otherwise flow over any dam, must be kept shut on Sundays, and at all times when the water is not required for milling purposes, so as to cause the water to flow through the fish pass, if there is one, or, if not, to flow over the dam. Any person who does not keep his sluices shut so as to supply the fish pass with water, or to allow the water to run over the dam, is liable, for a first offence, to a penalty of not exceeding 5*s.* an hour for every hour during which the sluices are kept open; for a second, of not less than 2*l.* 10*s.* in the whole, or more than 5*s.* an hour; for a third, of not less than 5*l.* in the whole, or more than 5*s.* an hour (*u*).

Supply of water to fish passes.

If in making or maintaining any fish pass, the boards of conservators cause any damage to or injuriously affect any land or hereditaments, they are liable for the injury thus done, if proceedings for the recovery of damages are taken within two years from the date of the erection of the fish pass (*x*). If the amount of damages claimed does not exceed 50*l.*, the sum payable is to be determined by two magistrates; if it exceeds 50*l.*, then to be settled by arbitration, in accordance with the provisions of the Common Law Procedure Act, 1854 (*y*). These provisions will be found in

Compensation for damage done by making fish passes.

Provisions of the Common Law Procedure Act.

(*u*) 24 & 25 Vict. c. 109, s. 26; 36 & 37 Vict. c. 71, s. 53.

(*x*) 36 & 37 Vict. c. 71, s. 54.

(*y*) 17 & 18 Vict. c. 125.

the Appendix: they provide that the proceedings before an arbitrator are to be conducted in the same way as if the case had been referred by a judge (*y*); that the award may be sent back to the arbitrator (*z*); that applications to set aside the award must be made within the first seven days of the term after the award is made (*a*); that the award may be enforced, though the time for setting it aside has not elapsed (*b*); if an action is commenced, the judge may stay proceedings (*c*); on failure of parties or arbitrators to appoint, the judge may appoint an umpire (*d*); if reference is to two arbitrators, and one party fail to appoint an arbitrator, the arbitrator appointed by the other may act alone (*e*),—the two arbitrators may appoint an umpire (*f*); that the award must be made within three months (*g*); and that the submission to arbitration may be made a rule of court (*h*).

Provision as
to the Severn
Navigation
weirs.

The object of the Salmon Fishery Act, 1873, being to place all weirs under the same law, the 55th section repeals certain provisions contained in the local Severn Navigation Acts, 1842 and 1853, as to the weirs erected under their authority in the Severn, and provides that they shall be weirs within the meaning of the Salmon Fishery Acts, 1861 to 1873, and the fish passes now in

(*y*) 17 & 18 Vict. c. 125, s. 7.

(*z*) Sect. 8.

(*a*) Sect. 9.

(*b*) Sect. 10.

(*c*) Sect. 11.

(*d*) Sect. 12.

(*e*) Sect. 13.

(*f*) Sect. 14.

(*g*) Sect. 15.

(*h*) Sect. 27.

such weirs, or which may hereafter be placed in them, are to be deemed fish passes within the meaning of the Salmon Fishery Acts (i).

Statutes as to Dams, Weirs and Fish Passes.

Every person who, after the 6th day of August, 1861, in waters where salmon are found, constructs a new dam, or raises or alters, so as to create increased obstruction to fish, a dam already constructed, shall attach and maintain attached thereto in an efficient state a fish pass of such form and dimensions as may be determined by the Home Office, and if he do not, such person shall incur a penalty not exceeding five pounds; and it shall be lawful for the Home Office to cause to be done any work required to be done by such person, and to recover the expense of doing the same in a summary manner from the person in default; but this does not authorize anything to be done which may injuriously affect any navigable river, canal or inland navigation, nor prevent any person from removing a fish pass for the purpose of repairing or altering a dam, so that within a reasonable time he restore such fish pass in as an efficient a state as it was before he removed the same (A).

Fish passes to be attached to future dams.

Every person, or the owner or occupier of any weir, dam or obstruction, who in any salmon river, since the sixth day of August one thousand eight hundred and sixty-one, has created, caused or increased, or who hereafter shall create, cause or increase, any obstruction to the passage of salmon, or who rebuilds or reinstates a weir or dam which from any cause shall have been destroyed or taken down to the extent of one half of the length of such weir, dam or obstruction, shall make a fish pass for salmon of such form and dimensions as the secretary of state shall approve, as part of the structure thereof, if none already exists, and every owner or occupier who omits or fails to make such fish pass in such weir, or who newly builds a weir without

Penalty on all persons rebuilding weirs and making new weirs without fish passes, and raising or altering weirs so as to increase obstruction to passage of salmon.

(i) 36 & 37 Vict. c. 71, s. 55.

(A) 24 & 35 Vict. c. 109, s. 25.

providing such fish pass, or who raises or alters any existing weir in whole or part, so as to cause increased obstruction to the passage of salmon, or who makes or continues any obstruction whatsoever to the passage of salmon without lawful authority, shall incur a penalty of not exceeding twenty pounds for every such offence, and a further penalty of not exceeding two pounds for every day during which such offence is continued, commencing from the date of the first conviction; and it shall be lawful for the secretary of state to cause to be done any work required to be done by such owner or occupier, and to recover the expenses of doing the same in a summary manner from such person, or from the owner or occupier of such obstruction who shall neglect to do the same. But this does not authorize anything to be done that may injuriously affect any navigable river, canal or inland navigation, public waterworks, dock or docks, the supply of water to which is obtained from any navigable river, canal or inland navigation, under the provisions of any act of parliament, nor shall anything herein or in the twenty-fifth section of the Salmon Fishery Act, 1861, prevent any person from removing a fish pass for the purpose of repairing or altering such obstruction, so that within a reasonable time he restores such fish pass in as effectual a state as it was before he removed the same; and for this purpose the owner or occupier of any such obstruction for the time being shall be deemed to be the person who created or caused or increased such obstruction in manner aforesaid (l).

Board may purchase weirs, &c. by agreement.

A board of conservators may purchase by agreement for the purpose only of removal, dams, fishing weirs, fishing mill-dams or fixed engines they may deem expedient to remove for the benefit of the fisheries of their district (m).

Board, if desirous of acquiring compulsorily a weir or obstruction for the purposes of removal, may petition secretary of state.

Where any board of conservators shall be of opinion, having regard to the prejudicial effect upon the salmon fisheries of their district, caused by any weir, dam, fishing weir, fishing mill-dam, fixed engine or artificial obstruction which hinders the passage of fish, that it would be beneficial to such fisheries if such weir, dam, fishing weir, fishing mill-dam, fixed engine or artificial obstruction should be removed, in whole or in part, but the

(l) 36 & 37 Vict. c. 71, s. 46.

(m) 28 & 29 Vict. c. 121, s. 27.

owner thereof shall be unwilling or unable to treat, or they cannot agree to the terms of purchase thereof, and such board shall be desirous of obtaining authority to acquire compulsorily the property of such weir, dam, fishing weir, fishing mill-dam, fixed engine or artificial obstruction, and premises for the purposes of such removal; such board may, after giving one month's notice of their intention to the owner thereof, present a petition to the secretary of state praying that such board may, with reference to such weir, dam, fishing weir, fishing mill-dam, fixed engine, or artificial obstruction, and the premises used in connection therewith, be allowed to put in force the powers of the Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the secretary of state may require.

Upon the receipt of such petition, and upon due proof of notice being given to the owner and occupier of such weir, dam, fishing weir, fishing mill-dam, fixed engine or artificial obstruction, the secretary of state, after satisfying himself that the board are provided with funds for the purchase of such weir, dam, fishing weir, fishing mill-dam, fixed engine or artificial obstruction, and the premises connected therewith, shall take such petition into consideration, and may either dismiss the same or direct an inquiry in the district in which such weir, dam, fishing weir, fishing mill-dam or artificial obstruction is situated, or otherwise inquire into the propriety of assenting to the prayer of such petition.

After the completion of such inquiry, the secretary of state may, by provisional order, empower the said board to put in force with reference to the said weir, dam, fishing weir, fishing mill-dam, fixed engine or artificial obstruction, and premises referred to in such order, the powers of the Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, with such conditions and modifications as he may think fit, and the board shall serve a copy of any order so made upon the owner and occupier of the said weir, dam, fishing weir, fishing mill-dam, fixed engine, or artificial obstruction and premises. No provisional order so made shall be of any validity until the same has been confirmed by act of parliament, and the act confirming such order shall be deemed

to be a public general act of parliament, and the said board shall be thereupon deemed and taken to be the promoters of an undertaking to remove the said weir, dam, fishing weir, fishing mill-dam, fixed engine or artificial obstruction, in whole or part, so as to enable salmon to pass more freely, and the residue of the premises so purchased, when separated from such weir, dam, fishing weir, fishing mill-dam, fixed engine or artificial obstruction, shall be deemed to be superfluous lands within the meaning of the said acts, and may be dealt with accordingly: provided that this power shall not extend to any weir constructed under any act of parliament for the purpose of improving the navigation of any river, or of supplying any town with water. For this purpose the word owner shall mean any person or corporation who under these provisions and the Lands Clauses Consolidation Acts would be enabled to sell and convey any such weir, dam, fishing mill-dam, fixed engine or artificial obstruction (n).

Notice re-
quired before
Home Office
gives consent.

The Home Office shall not give their consent to the attachment by a proprietor or board of conservators of a fish pass to any dam, unless such proprietor or board of conservators prove, to the satisfaction of the Home Office, that they have served notice on the owner of such dam of their intention to apply for such consent, and at the same time have furnished him with plan and specification of the fish pass which they propose to erect, a reasonable time before their application; and it shall be lawful for such owner to urge any objections he may think fit to the Home Office against their giving their consent, and the Home Office shall take any objections so made into consideration before they give their consent to the attachment of the fish pass (o).

Proprietor
with consent
of Home
Office may
attach fish
passes to ex-
isting dams.

Any proprietor of a fishery or board of conservators with the written consent of the Home Office may attach to every dam existing on the 6th August, 1861, a fish pass, of such form and dimensions as the Home Office may approve, so that no injury be done to the milling power or to the supply of water to or of any navigable river, canal, or other inland navigation by such fish pass; and any person obstructing any person legally

(n) 36 & 37 Vict. c. 71, s. 49.

(o) 24 & 25 Vict. c. 109, s. 24.

authorized in erecting or doing any necessary act to erect or maintain such fish pass shall incur a penalty not exceeding ten pounds for each act of obstruction; and any person injuring such fish pass shall pay the expense of repairing the injury, such expense to be recovered in a summary manner, and, in addition thereto, if such injury is wilful, shall incur a penalty not exceeding five pounds: provided that if any injury is done to any dam by reason of the affixing of a fish pass in pursuance of this section, any person sustaining any loss thereby may recover compensation for such injury in a summary manner from the person or body of persons by whom such fish pass has been affixed (*p*), if proceedings for the recovery of the same are instituted within two years after the time at which the fish pass was first affixed to the dam (*q*).

When any proprietor of a fishery or board of conservators is or are, from the circumstances of the case, unable to attach a fish pass to any weir, dam, fishing mill-dam, or obstruction under the provisions of the twenty-third section of the Salmon Fishery Act, 1861, such proprietor or board of conservators may, after giving one month's notice of their intention to the owner of the bank adjoining any weir, dam, fishing mill-dam, or obstruction, present a petition to the secretary of state praying to be allowed to purchase so much of the bank adjoining the same as may be necessary for such fish pass, and to be allowed to put in force the powers of the Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the secretary of state may require.

Provision as to purchase of land for fish passes.

Upon the receipt of such petition, and upon due proof of notice being given to the owner and occupier of such land, the secretary of state, after satisfying himself that the board are provided with funds for the purchase of them, shall take such petition into consideration, and may either dismiss the same or direct an inquiry in the district in which such weir, dam, fishing mill-dam, or obstruction is situated, or otherwise inquire into the propriety of assenting to the prayer of such petition.

(*p*) 24 & 25 Vict. c. 109, s. 23.
 (*q*) 28 & 29 Vict. c. 121, s. 59.

After the completion of such inquiry, the secretary of state may, by provisional order, empower the said proprietor or board to put in force with reference to so much of the bank adjoining the said weir, dam, fishing mill-dam, or obstruction, the powers of the Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, with such conditions and modifications as he may think fit, and the board shall serve a copy of any order so made upon the owner and occupier of the said land. No provisional order so made shall be of any validity until the same has been confirmed by act of parliament, and the act confirming such order shall be deemed to be a public general act of parliament, and the said proprietor or board shall be thereupon deemed and taken to be the promoters of an undertaking to purchase the said land (q).

Damage to
fish passes.

Any person wilfully altering or injuring any fish pass, or doing any act whereby fish are obstructed or liable to be obstructed in using such fish pass, or whereby such fish pass is rendered less efficient, or altering the bed or banks of the river so as to render any fish pass less efficient, or using any contrivance or doing any act whereby fish are in anywise liable to be scared, hindered, or prevented from passing through such fish pass, or doing any act for the purpose of preventing salmon from passing through a fish pass, or taking any salmon in its passage through the same, shall for every such offence incur a penalty of not exceeding five pounds for a first offence, and not exceeding ten pounds for each subsequent offence, and shall forfeit any salmon taken by him in contravention of this section, and any instrument used by him in taking the same: and a further penalty of not exceeding one pound for every day during which any such alteration, obstruction, or contrivance is continued from the date of a second conviction for such offence, in addition to any expense which may be incurred in restoring such fish pass to its former state of efficiency (r).

Secretary of
state may ap-
prove exist-
ing fish
passes.

In all cases where any fish pass has been already constructed in any weir, dam, or fishing mill-dam, and has received the approval of the secretary of state, such fish pass shall be deemed to be a fish pass within the meaning of the Salmon Fishery

(q) 36 & 37 Vict. c. 71, s. 49.

(r) 24 & 25 Vict. c. 109, s. 23; 36 & 37 Vict. c. 71, s. 48.

Acts, 1861 to 1878, notwithstanding such fish pass was not constructed in the manner and by the parties specified in the Salmon Fishery Act, 1861 to 1878. And it shall be lawful for the secretary of state to approve and certify any fish pass that now is or hereafter shall be constructed, if he is of opinion that such fish pass is efficient in all respects and for all purposes, as if the same had been constructed under the provisions of the Salmon Fishery Act, 1861, with the written consent and approbation of the secretary of state (e).

On application to the secretary of state by any board of conservators, setting forth that any fish pass or free gap within their district, under the provisions of the Salmon Fishery Act, 1861, is in their opinion capable of improvement, the said secretary of state may direct any alteration in the said fish pass or free gap, or may direct a new fish pass or free gap to be made in another site, and the board of conservators shall defray all costs, charges and expenses attending the alteration or erection of any such fish pass or free gap, and for the purposes of this section, where a river is divided into separate branches, each branch shall be considered as a separate river: provided, that no injury shall be done under the exercise of the powers given by this section to the supply of water to or of any navigable river, canal, or other inland navigation (f).

Alteration of
fish pass or
free gap.

The sluices, if any, for drawing off the water which would otherwise flow over any dam shall be kept shut on Sundays and at all times when the water is not required for milling purposes, in such manner as to cause such water to flow through the fish pass, if any, or over the dam; and any person making default in complying with the requisitions of this section shall incur a penalty not exceeding five shillings per hour for every hour during which such default continues; but this section shall not preclude any person from opening a sluice for the purpose of letting off water in cases of flood, or for milling purposes, or when necessary for the purposes of navigation, or for cleaning or repairing any dam or mill or the appurtenances thereof (u).

Supply of
water to fish
passes.

In all cases in which it is alleged that a board of conservators,

(e) 36 & 37 Vict. c. 71, s. 52.

(f) 28 & 29 Vict. c. 121, s. 32.

(u) 24 & 25 Vict. c. 109, s. 26; 36 & 37 Vict. c. 71, s. 58.

Compensation to be paid on erecting fish passes or gratings.

in executing the powers and authorities of the Salmon Fisheries Acts, 1861 to 1873, have caused any damage to or injuriously affected any land or other hereditaments by reason of the making or maintaining of any fish pass or other work, if the compensation claimed in respect of such alleged damage shall not exceed the sum of fifty pounds, the same shall be settled by two justices of the peace; but if the compensation shall exceed the sum of fifty pounds, the same shall be settled by arbitration, in accordance with the provisions of the Common Law Procedure Act, 1854: provided always, that no compensation shall be recovered under this section unless proceedings for the recovery of the same are instituted within two years from the date of the erection of such fish pass or other work (x).

Provision as to Severn Navigation weirs.

Whereas it is expedient that the dams or weirs which have been constructed by the Severn commissioners under the provisions of the Severn Navigation Acts, 1842 and 1853, should be placed under the same general law as is applicable to dams or weirs under the Salmon Fishery Acts, 1861 to 1873: Be it therefore enacted, that sections one hundred and fifty-eight, one hundred and fifty-nine, and one hundred and sixty of the Severn Navigation Act, 1842, and so much of section three of the Severn Navigation Act, 1853, as extends their operation to the Tewkesbury weir therein mentioned, be hereby repealed, and that each of the dams or weirs constructed by the Severn commissioners under the provisions of the Severn Navigation Acts, 1842 and 1853, respectively, or either of them, shall be deemed a dam or weir within the meaning of the Salmon Fishery Acts, 1861 to 1873, and the provisions of the said acts shall apply thereto; and that every fish pass now existing in the said dams or weirs or either of them, or which may be constructed therein under the provisions of this act, shall be deemed a fish pass within the meaning of the Salmon Fishery Acts, 1861 to 1873, and shall be maintained in an efficient state by the said Severn commissioners (y).

(x) 36 & 37 Vict. c. 71, s. 54.

(y) Sect. 55.

CHAPTER VIII.

GRATINGS.

THE Salmon Fishery Act, 1873, defines a grating as "any device approved by the secretary of state for preventing the passage of fish through any channel" (*a*), and in that sense the word is used throughout the present chapter.

Definition of grating.

The Salmon Fishery Act, 1861, provided for the erection of gratings, to prevent the descent of salmon into artificial channels, in two cases (*b*): (1) when the channel was used for the purpose of supplying towns with water; and (2) when used for supplying any navigable canal. No provision was made in that act for the erection of gratings at the head or tail races of mills, or at the mouths of small brooks, up which it was not desirable that salmon should go. The Salmon Fishery Act, 1873 (*c*), empowers boards of conservators to put up gratings in every case, and to fix by bye-law (*d*) the time in each year during which they are to be kept shut; and the law upon the subject of gratings to watercourses is now as follows:—

Gratings in channels for supplying canals and towns with water.

(1) In any artificial channel used for the purpose

(*a*) 36 & 37 Vict. c. 71, s. 4.

(*b*) 24 & 25 Vict. c. 109, s. 18.

(*c*) 36 & 37 Vict. c. 71, Part IX., ss. 58 to 61.

(*d*) Sect. 89.

Rules as to
the erection
of gratings.

of supplying towns with water, by which salmon or the young of salmon are liable to be led aside from the main river, the company or persons having control of such channel are bound to put up and maintain a grating of such form and in such manner as one of the inspectors shall approve. If such grating is not put up the persons are liable to a penalty not exceeding 5*l.* a day for the first offence; of not less than 2*l.* 10*s.* nor more than 5*l.* for the second; of not less than 5*l.* for the third. If the company or person fail to maintain such grating, they or he are liable to a penalty not exceeding 1*l.* a day for the first; of not less than 2*l.* 10*s.* in the whole for the second offence; of not less than 5*l.* in the whole nor more than 1*l.* a day for the third (c);

- (2) If the channel is used for supplying any navigable canal, the company or persons not making, or having made and not maintaining, an approved grating, are liable to the like penalties as in the former case (c);
- (3) The grating must be so fixed as not to interfere with the passage of boats on any navigable canal (c);
- (4) Any board of conservators, after having given notice to the owner or occupier of any mill or other premises, may order a grating to be placed in any watercourse, mill-race,

Board may
place gratings
in water-
courses.

cut, leat or channel for conveying water from a salmon river for any purpose (d);

- (5) Such grating is to be placed at or near the point of divergence and the point of return to the river of such channel, and is to be of such form and dimensions as the board, with the sanction of the secretary of state, may determine (d);
- (6) The grating is to be placed so as not to obstruct any channel used for navigation, nor to interfere with the effective working of any mill (d).

It will be seen that, although the act gives boards of conservators power to erect gratings, the following points seem to be overlooked:—

- (i) No power is given to place the grating if the owner of the mill, or of the land where the grating is proposed to be put, does not consent;
- (ii) No power is given to the board to go on lands to erect the gratings;
- (iii) No power is given to purchase any lands requisite for the purpose.

These omissions, coupled with the words that a grating is not to interfere with the effective working of any mill, will render the power in many cases inoperative.

The next provision will, in practice, be still more useless. The secretary of state is empowered, in all cases which he shall deem expedient, to cause

Omissions
from the
clause.

Power to
widen chan-
nels.

(d) 36 & 37 Vict. c. 71, s. 58.

any watercourse, mill-race, cut, leat or other channel to be widened at the expense of the board of conservators, so far as may be necessary, to compensate for the diminution of any flow of water caused by the erection of any grating, or take some other steps to prevent the flow of water being prejudicially diminished or otherwise injured (*e*).

This section, like the last, fails to provide for the case where the owner refuses to sell the land for the purpose of widening the channel. The bill as originally drawn provided for applying the sections of the Lands Clauses Act relating to the compulsory purchase of land to this case, but this provision was struck out and the act left in its present inefficient state. Not only is there no power to purchase lands compulsorily, but also a board of conservators has no power to purchase *lands* voluntarily, they can only purchase weirs and dams for the purpose of removal (*f*); and it also seems doubtful if a board of conservators were to decline to lay out the money in widening a channel, what power, except refusing his sanction to the erection of the grating, the secretary of state has to compel them to do so.

Board may
place gratings
at mouths of
streams.

With the consent of the secretary of state the board has power to take such steps as he approves for preventing the ingress of salmon into streams where the salmon or their spawning beds are, from the nature of the channel, liable to be

(*e*) 36 & 37 Vict. c. 71, s. 59.

(*f*) 28 & 29 Vict. c. 121, s. 27.

destroyed. But the means adopted are not to prejudicially interfere with any water rights used for purposes of manufacture, agriculture, drainage or navigation (*g*). As any grating placed across a stream must more or less interfere with some one or other of these rights, the section, although it would in many cases, if it could be used, be most valuable, is by the proviso rendered practically valueless, as well as by the radical objection to all the grating clauses mentioned above, that there is really no power of enforcing them against an unwilling land or millowner.

When the gratings are put up the board are to determine by bye-law the times of the year when they are to be kept up across the head race and tail race of any mill or any artificial channel (*h*). But the bye-law will not authorize any grating to be kept up that diminishes the supply of water to any mill, or interferes with the passage of vessels, or otherwise injures any inland navigation or lock. No bye-law will apply to any grating placed across an artificial channel used for supplying towns with water, or any inland navigation, the company or persons having the control of them being by statute obliged to keep up gratings there all the year round (*i*). As every grating of necessity diminishes in a greater or less degree the supply of water to a mill, the bye-laws made under this power will probably have a very restricted opera-

Board to determine by bye-laws the times of year gratings are to be closed.

(*g*) 36 & 37 Vict. c. 71, s. 60.

(*h*) Sect. 39.

(*i*) 24 & 25 Vict. c. 109, s. 13.

tion so far as relates to a grating in the head race of any mill. It will, however, be observed that the words here are different from the words in clause 58, which speaks of the effective working of any mill, thus including both the head and tail race. As the grating in the tail race, although it interferes with the effective working by damming back the tail water on the mill wheels, does not at all interfere with the supply, there is nothing to prevent a very stringent bye-law being made as to keeping up gratings in tail races if only the board can even get them placed in the race in the first instance.

Maintenance
of gratings.

When once the gratings are erected under the Salmon Fishery Act, 1873, it is the duty of the owner of the land adjoining the grating, and of the owner or occupier of the land to which the channel in which the grating is placed leads, to take all reasonable means to preserve them from injury, and to prevent them being removed (*k*). It will be noted that only a negative duty is thrown on the landowner and his tenant not to touch or let any one else touch the gratings; nothing is said as to the cost of maintaining the gratings, and as it is not thrown by the act on the millowner or landowner, it must be borne by the board. Indeed, the millowner and his tenant as such have nothing to do with the gratings; it is the adjoining landowner or the owner or occupier of the lands to which the watercourse leads who is mentioned in

Duty of land-
owner.

(*k*) 36 & 37 Vict. c. 71, s. 61.

the act. It is doubtful if any liability of a positive nature (except to prevent any one injuring the grating), such as keeping the gratings free from rubbish, is even thrown upon the landowner or occupier. The duty and the expense of erecting and maintaining them belongs to the board.

If any owner, occupier or other person either injures, or knowingly permits the gratings to be injured, or removes, or knowingly permits to be removed, any part of them during the time they are ordered to be kept up by any bye-law, or improperly opens them, or knowingly permits them to be improperly opened, he is liable for every such injury, removal or improper opening to a penalty of not exceeding 5*l.* for the first offence; not less than 2*l.* 10*s.* nor more than 5*l.* for the second; not less than 5*l.* for the third offence (*l*).

Injury to gratings.

If by reason of the erection of any grating the board of conservators cause any damage to or injuriously affect any land or other hereditaments, if within two years from the date of the erection of the grating proceedings for the recovery of compensation are taken, the board will be liable to pay compensation in respect of the alleged damage. If the compensation claimed does not exceed 50*l.*, then the amount to be paid is to be settled by two magistrates; if it exceeds 50*l.*, then it is to be settled in accordance with the provisions of the Common Law Procedure Act, 1854 (*m*).

Compensation for lands injuriously affected by gratings.

(*l*) 36 & 37 Vict. c. 71, s. 61.

(*m*) See the provisions in the Appendix, and ante, p. 163; 36 & 37 Vict. c. 71, s. 54.

"Injuri-
ously
affect."

It will be observed that the words here used, "injuriously affect," are very wide, and the interpretation they have received by the courts under the 68th section of the Lands Clauses Consolidation Act is still wider; so much so that hardly any grating can be placed in a stream that does not in a greater or less degree injuriously affect the proprietor above or below it as well as the miller. The power given to boards of conservators as to gratings, although it appears very large, is in reality so fenced round by provisions and restrictions as to be very small indeed. And although perhaps boards of conservators have no more useful power than that of saving the young fry of salmon in their descent in the spring, and the spawning fish in their ascent in the autumn from the destruction that awaits them at mills, yet, as given by the Salmon Fishery Act, 1873, if boards of conservators wish to keep clear of litigation, there is no power that will require greater discretion in putting into force than that of placing gratings in watercourses.

Statute as to Gratings.

Definition of
"grating:"

"Grating" shall mean and include any device approved by the secretary of state for preventing the passage of fish through any channel (n).

Penalty on
company or
person not
erecting
gratings to
prevent the
descent of

Where salmon or the young of salmon are led aside out of a main stream by means of any artificial channel used for the purpose of supplying towns with water, or for supplying any navigable canal, the company or persons having the control over such artificial channel shall, within six months after the 1st of October,

(n) 36 & 37 Vict. c. 71, s. 4.

1861, put up and shall maintain, at their own costs and charges, a grating or gratings across such channel, for the purpose of preventing the descent of the salmon or the young of salmon, and such grating or gratings shall be placed in such form and manner as may be approved by one of the inspectors of fisheries; and any company or persons failing to put a grating or gratings in cases where they are required to do so shall incur a penalty not exceeding five pounds for every day after the expiration of such period of six months during which he fails to comply with the provisions of this section; and any such company or person failing so to maintain the same shall incur a penalty not exceeding one pound for every day during which such failure continues: provided always, that no such grating shall be so placed as to interfere with the passage of boats on any navigable canal (o).

salmon into
artificial
streams.

Any board of conservators after due notice to the owner or occupier of any mill or other premises, at the expense of such board during such period as may be prescribed in each year, may order to be placed in any watercourse, mill race, cut, leat, or other channel for conveying water for any purpose from any river frequented by salmon at or near the point of divergence from and return to such river, or either of them, or in any other suitable place, a grating of such form and dimensions as they shall determine: provided always, that nothing herein contained shall affect the liability of any person to place and maintain a grating or gratings across any artificial channel used for the purpose of supplying towns with water or supplying any navigable canal, nor shall authorize any grating to be placed so as to obstruct any channel used for navigation or in any way to interfere with the effective working of any mill (p).

Gratings in
watercourses.

In all cases of construction of gratings under the powers of this act, the secretary of state may, in such cases as he shall deem expedient, cause any watercourse, mill race, cut, leat, or other channel to be widened at the expense of such board so far as necessary to compensate for the diminution of any flow of water caused by the erection of any grating, or shall take some other

Power to
widen chan-
nels.

(o) 24 & 25 Vict. c. 109, s. 13.

(p) 36 & 37 Vict. c. 71, s. 58.

means to prevent the flow of water being prejudicially diminished or otherwise injured (*p*).

Board may place gratings at mouths of streams.

A board of conservators, with the consent of the secretary of state, may adopt such means as he shall approve for preventing the ingress of salmon into streams in which they or their spawning beds are, from the nature of the channel, liable to be destroyed, but so that no water rights used or enjoyed for the purposes of manufacture, or agricultural purposes or drainage or navigation, shall be prejudicially interfered with thereby (*q*).

A board of conservators may by bye-law determine when gratings shall be placed during certain times of the year across the head and tail race of mills and across any artificial channel, so, however, as not to diminish the supply of water to any mill, nor to interfere with the passage of vessels or otherwise injure any inland navigation or lock, but so that the above-mentioned provisions in regard to artificial channels for supplying towns with water or navigable canals are not affected (*r*).

Owner to preserve gratings.

The owner or occupier of the lands adjoining any grating erected under the authority of the Salmon Fishery Act, 1873, and the owner or occupier of the lands to which such watercourse, mill race, cut, leat, or other channel leads, shall take all reasonable means to preserve the said gratings from injury, and to prevent the same from being removed; and in case any owner, occupier, or other person, shall injure such gratings, or remove any part of them, during the period prescribed for any such grating to be kept up by any bye-law made under the authority of that act, or open them improperly, or knowingly permit them to be injured or removed or improperly opened, he shall for every such injury, removal, or improper opening, forfeit and pay any sum not exceeding five pounds (*s*).

Compensation to be paid on erecting fish passes or gratings.

In all cases in which it is alleged that a board of conservators, in executing the powers and authorities of the Salmon Fisheries Acts, 1861 to 1873, have caused any damage to or injuriously affected any land or other hereditaments by reason of the

(*p*) 36 & 37 Vict. c. 71, s. 59.

(*q*) Sect. 60.

(*r*) Sect. 39.

(*s*) Sect. 61.

making or maintaining of any grating, if the compensation claimed in respect of such alleged damage shall not exceed the sum of fifty pounds, the same shall be settled by two justices of the peace, but if the compensation shall exceed the sum of fifty pounds the same shall be settled by arbitration in accordance with the provisions of the Common Law Procedure Act, 1854: provided always, that no compensation shall be recovered under this section unless proceedings for the recovery of the same are instituted within two years from the date of the erection of such fish pass, grating, or other work (t).

(t) 36 & 37 Vict. c. 71, s. 54.

CHAPTER IX.

CLOSE TIME.

-
- SECT. 1. ANNUAL CLOSE TIME.
 2. WEEKLY CLOSE TIME.
 3. NIGHTLY CLOSE TIME.
 4. EXPORTATION OF FISH.
-

SECT. 1.—*Annual Close Time.*

Close season
from the ear-
liest times.

FROM the earliest times of salmon legislation the capture of fish during certain times has been prohibited. As far back as the year 1285, the celebrated statute of Westminster the Second (*a*) imposed a penalty on the capture of salmon at certain times of the year, and between that date and 1861 the regulations as to close time have been innumerable. Up to 1861, the close season was fixed by the magistrates in quarter sessions, and consequently the different close seasons throughout England were nearly as variable as the different rivers. This opened a great door to fraud and poaching, and one of the recommendations of the royal commission of 1860 was one uniform close time throughout England and Wales. This recommendation was carried into effect by the 17th

Salmon
Fishery Act,
1861, intro-

(*a*) 13 Edw. I., stat. 1, c. 47.

section of the Salmon Fishery Act, 1861 (*b*), which makes it illegal to fish for, catch or attempt to catch or kill salmon between the first of September and the first of February following, both inclusive, in any way but with a rod and line, fishing with which was thereby allowed up to the first of November (*c*). The Act of 1861 went on to provide that no one should buy, sell, or expose for sale, or have in his possession for sale, any salmon between the third of September and the second of February following, except salmon cured, pickled or dried within the open season, or salmon caught beyond the limits of the act (*d*). It will be seen that unless it could be proved that the salmon was for sale or was unclean or unseasonable it was no offence to have possession of salmon during close time.

duced one
uniform close
time.

Sale of
salmon.

The Act of 1861 also provided that the Home Office, on the application of the justices in quarter sessions, might extend or vary the close season, that is, the secretary of state could either increase or alter the close season (*e*); but if they altered it this difficulty arose, there was no power to allow fish to be sold during such altered time—the capture was legal but the sale illegal: and thus the variation was practically useless, for the sale in England being illegal the exportation of the fish to France was illegal also.

Extension or
variation of
close time.

(*b*) 24 & 25 Vict. c. 109.

(*c*) Sect. 17.

(*d*) Sect. 19.

(*e*) Sect. 18.

By the Salmon Fishery Act, 1865, the application to the secretary of state was to be made by a board of conservators, not by quarter sessions (*f*).

Boards of conservators by bye-law may alter close time.

By the Salmon Fishery Act, 1873 (*g*), a great change has been made in the law as to close time. By bye-law the boards can vary the close season, and the sale of fish in the extended open time is made legal (*h*). The doctrine of a uniform close time for every river in England and Wales is abolished, and each river can now fix its own close season within the following rules:—

Rules as to close time.

- (1) For every salmon river in England and Wales there must be at least 154 days close time for every kind of fishing but with rod and line (*i*);
- (2) Such close time, if it does not begin before, must do so on the 1st of November for all kinds of fishing but with rod and line (*i*);
- (3) For ninety-two days in each year there is to be no fishing for salmon whatever (*i*);
- (4) If the ninety-two days do not begin before, they must begin on the 1st of December in each year (*i*);
- (5) No salmon can be sold after the 3rd day of November in any year in any case (*h*);
- (6) If no bye-law has been made upon the subject of annual close time the times remain

(*f*) 28 & 29 Vict. c. 121, s. 24.

(*g*) 36 & 37 Vict. c. 71.

(*h*) Sects. 39 and 19.

(*i*) Sect. 39.

(*k*) Sect. 19.

as at present, and no person can fish for, catch, or attempt to catch, salmon between the 1st of September and the 1st of February, both inclusive, except with rod and line (*l*);

- (7) If the board of conservators have altered the time for the capture of salmon, then the salmon may be sold if caught during such extended open time, provided its capture was lawful by other means than by rod and line at the time and place where it was caught (*m*);
- (8) Between the 2nd of October and the 1st day of February following, both inclusive, in any salmon river within a fishery district, no person may fish for, catch or attempt to catch any trout or char (*n*);
- (9) Between the 2nd of October and the 1st of February no person may buy, sell, or expose for sale, or have in his possession for sale any trout or char (*o*).

The exemptions from the above rules are:—

Exceptions
from the rule.

- (1) Persons taking, or endeavouring to take, or having in their possession any salmon during close time for artificial propagation or other scientific purposes, with the written consent of the board of conservators of the district (*p*);

(*l*) 24 & 25 Vict. c. 109, s. 17.

(*m*) 36 & 37 Vict. c. 71, s. 19.

(*n*) 28 & 29 Vict. c. 121, s. 64.

(*o*) 36 & 37 Vict. c. 71, s. 20.

(*p*) 24 & 25 Vict. c. 109, s. 14; 28 & 29 Vict. c. 121, s. 60.

Exception as
to fishing in
close time.

- (2) Persons taking, or endeavouring to take, or having in their possession any trout or char, or trout or char roe, with the consent in writing of the board of conservators of the district, for artificial propagation or other purpose (*q*);
- (3) Persons buying, selling, or having in their possession for sale, salmon which has been cured, salted, pickled or dried beyond the limits of the United Kingdom, it resting with them to prove that it was so cured or preserved (*r*);
- (4) Persons buying, selling, or having in their possession for sale, cured, salted, pickled or dried salmon caught within the limits of the United Kingdom, provided its capture by any means except a rod and line was lawful at the time and place where it was caught, the burden of proving that it was so resting with the person having the salmon in his possession (*r*);
- (5) Persons buying, selling or exposing for sale any clean fresh salmon, or having in their possession for sale any salmon which, if caught within the limits of the Salmon Fishery Acts, was legally captured by other means than a rod and line, the burden of proving which rests with the accused (*r*);

(*q*) 28 & 29 Vict. c. 121, s. 64.

(*r*) 36 & 37 Vict. c. 71, s. 19.

- (6) Persons buying, selling or exposing for sale, or having in their possession for sale, any clean fresh salmon caught beyond the limits of the United Kingdom, but the burden of proving it was so caught rests with the person in whose possession for sale it is(*s*).

It will be seen that to secure conviction against any person having salmon in their possession for sale during the annual close time, the prosecutor must prove that the defendant had salmon in his possession for sale. He need prove nothing more than this, the possession for sale being *prima facie* illegal; but this must be proved, as it is no offence having salmon in possession during close time, if it is not for sale and is not unclean or unseasonable.

Requisites for securing a conviction.

It will also be noted, that the sale of trout or char during close time, wherever caught, is prohibited, so that no trout or char of any kind can be sold in England or Wales between the 2nd of October and the 1st February(*t*).

Sale of trout or char during close time absolutely illegal.

The penalties for fishing for salmon in close time are:—

For a first offence not exceeding five pounds, and not exceeding two pounds in respect of each salmon caught, with forfeiture of all salmon caught, and any net or moveable instrument with which it is caught(*u*).

Penalties.

(*s*) 36 & 37 Vict. c. 71, s. 19.

(*t*) Sect. 20.

(*u*) 24 & 25 Vict. c. 109, s. 17; 28 & 29 Vict. c. 121, s. 58.

Penalties on
catching
salmon in
close time.

For a second offence not less than 2*l.* 10*s.* and not exceeding five pounds and a penalty not less than one pound and not exceeding two pounds in respect of each fish caught, but it is not obligatory on the justices to inflict a greater fine in the whole than 2*l.* 10*s.* For a third offence not less than 5*l.* in all, and not exceeding 5*l.* for the fishing, and 2*l.* in respect of each salmon caught, or imprisonment with or without hard labour for not less than one nor more than six months; and both on the second and third convictions forfeiture of all moveable nets used and fish caught (*x*).

It will be seen on reference to the definition of annual close season in the Act of 1873, that it will not be necessary in any bye-law varying the annual close time to insert any penalty, as the statute extends the penalties to the close time as altered by bye-law (*y*).

Penalties on
capture of
trout and
char.

The penalties for the capture of any trout or char during close time are, not exceeding 2*l.* for the first offence; not less than 1*l.* nor more than 2*l.* for the second; not less than 2*l.* for the third (*z*); and on each conviction forfeiture of all trout and char caught (*z*).

Penalty on
sale of
salmon.

The penalty for selling any salmon, or having any salmon in possession for sale, during close

(*x*) 24 & 25 Vict. c. 109, s. 17; 28 & 29 Vict. c. 121, ss. 56 and 57.

(*y*) 36 & 37 Vict. c. 71, s. 4.

(*z*) 28 & 29 Vict. c. 121, s. 64.

time, is forfeiture of all salmon or parts of salmon, and not exceeding 2*l.* for each salmon or part of salmon in the accused's possession; for the second offence, a penalty of not less than 1*l.* for each fish or part of a fish, and not exceeding 2*l.*, with forfeiture of the fish, but not exceeding in the whole 2*l.* 10*s.*; for the third, not less than 2*l.* for each fish, but not exceeding in the whole 5*l.*; for the fourth, not less than 5*l.* for each fish and forfeiture of all fish(*b*). Formerly, under the Salmon Fishery Act, 1861, as amended by the Act of 1865, imprisonment with hard labour might have been added, but the section of the Act of 1861 is repealed, and the power of giving imprisonment is not reimposed.

The penalty for selling trout or char during close time is, for the first offence, not exceeding 1*l.* for each trout or char; for the second, not less than 10*s.* nor more than one pound for each trout or char, it not being compulsory to fine in the whole more than 2*l.* 10*s.*; for the third, of not less than 1*l.* for each trout or char, but it is not compulsory to fine in the whole more than 5*l.*; and upon each conviction the forfeiture of all trout or char bought, sold, exposed for sale, or in the possession of the accused for sale(*c*).

In regard to fixed engines, the proprietor or occupier of every fishery for salmon must, within thirty-six hours after the commencement of the close time, remove and carry away from his fishery

Penalty on
sale of trout
or char.

Passage to be
left through
fixed engines
during close
time.

(*b*) 36 & 37 Vict. c. 71, s. 19.

(*c*) Sect. 20.

the inscales, hecks, tops and rails of all cruives, boxes or cribs, and all planks and temporary fixtures for taking or killing salmon, and all other obstructions to the free passage of fish within his fishery, otherwise he incurs a penalty of not exceeding 10*l.* a day for the first offence; of not less than 5*l.* nor more than 10*l.* a day for the second; of not less than 20*l.* for the third; and upon each conviction a forfeiture of all things not removed and carried away. But on a second conviction the magistrates need not fine the accused more than 2*l.* 10*s.*; and on the third conviction more than 5*l.*; but on a fourth they must impose the full penalty.

*Hodgson v.
Little.*

As to what will be a sufficient compliance with this section, it was held, in the case of *Hodgson v. Little (d)*, that the mere removal of the hecks in a fishing mill-dam and not opening the sluices as well was not a sufficient compliance. That case was an appeal against a conviction under the 20th section of the Salmon Fishery Act, 1861, for obstructing salmon from passing up a river after the commencement of the annual close season.

The appellant was the occupier of a mill on the River Tees and a fishing mill-dam, which had been constantly used for the purpose of fishing. On the 19th of May, 1862, by the desire of his landlord, he ceased from fishing and took away the

(*d*) 14 C. B., N. S. 111; 9 Cox, C. C., 327; 32 L. J., M. C. 220; 8 L. T., N. S. 358; 10 Jur., N. S. 46.

"hecks" which were necessary for that purpose. *Hodgson v. Little.*
The mill-dam remained; it extended across the river, and prevented any salmon (except extremely active ones) from passing up the river. He was fined for not leaving the sluices open when the close season commenced, this season extending from September 1st to February 1st; part of the dam was also forfeited by the justices.

Chief Justice Erle, in delivering judgment, said: "The appellant in this case is the occupier of a mill and fishing mill-dam, and has been convicted under the 20th section for not removing obstructions to salmon in passing up the river during the close season. He had a fishery, *i.e.*, a material contrivance or engine for taking fish. The 20th section provides that in the close season all obstructions shall be removed. It seems to me that the conviction is supported by the direct words of the section. Though the 'hecks' have been removed, so that the fishery is not available at present, yet the rest of the fishing mill-dam remains, and no fish can pass, except a few that are extraordinarily active. It seems the purpose of the legislature to secure a free passage for the fish, and old dams must be altered to effect it. The appellant says that his old fishery is changed into a mill-dam, but the grand question is, whether he can be allowed to obstruct the fish, and on that point I am clear the conviction was right."

Mr. Justice Willes said: "I am of the same opinion. The legislature says that all obstructions of whatsoever nature must be removed."

*Hodgson v.
Little.*

Mr. Justice Byles said: "The conviction is substantially right. The act provides for the free passage of the fish all up the stream, and it must be construed so as to preserve that passage. This comes within section 25; it is either a new dam, or such an alteration of an old one as to cause a complete obstruction. The word 'fishery' comprehends a fixed apparatus for fishing. There was one until the 19th May, and since then there has been neither a formal nor a legal abandonment of it; it might be used again to-morrow. This is a case in which we should put a wide and beneficial construction on the act."

Mr. Justice Keating said: "I am of the same opinion. The fish have been obstructed."

Obstructing
the passage
of fish during
close time.

If any person during the annual close season places any obstruction, uses any contrivance, or does any act for the purpose of deterring salmon passing up a river, except fishing in a legal way for fish other than salmon, he is liable to a penalty for a first offence of not exceeding 5*l.*; for a second of not less than 2*l.* 10*s.* and not exceeding 5*l.*; for a third offence not less than 5*l.* (*e*).

Close time
for eels.

In addition to the close time for salmon the Salmon Fishery Act, 1873, incidentally provides a close time for eels, by prohibiting any person between the 1st January and the 24th June in any year having, fixing, or using in any salmon river any baskets, nets, traps, or devices for catching eels, except eel baskets not exceeding in any part

ten inches in diameter, constructed so as to be fished with bait and not used at any dam or weir (*f*).

No person may place on the apron of any weir Lamperns. any basket, trap, or device for taking fish, except wheels or leaps for taking lamperns between the 1st of August and the 1st of March (*f*).

The penalties for taking eels or lamperns at any Penalties. other time are for the first offence not exceeding 2*l.* a day, for the second not less than 2*l.* 10*s.* in the whole and not exceeding 2*l.* a day, for a third not less than 5*l.* in the whole and not exceeding 2*l.* a day, for the fourth and any subsequent offence not less than 2*l.* a day (*f*).

SECT. 2.—*Weekly Close Time.*

The Salmon Fishery Act, 1861, introduced what had been until then an unknown feature in the English salmon fishery law, “weekly close time.” In order to give the upper proprietors a share of the fresh-run salmon in the river, and to enable the fish to distribute themselves more evenly over the whole of the district, all fishing for salmon, except with rod and line, was prohibited for a certain time in each week. Weekly close time introduced by the Salmon Fishery Act, 1861.

By the twenty-first section of the Salmon Fishery Act, 1861 (*g*), it was provided, that no one should fish for, catch, or kill, except with rod and line, any salmon between twelve o’clock on Saturday at noon and six on the following Monday morning. The upper proprietors having for some time past

(*f*) 36 & 37 Vict. c. 71, s. 15.

(*g*) 24 & 25 Vict. c. 109, s. 21.

Salmon
Fishery Act,
1873.

Board may
by bye-law
alter weekly
close time.

stated that the forty-two hours given by the Act of 1861 was not a sufficient time to enable the fish to reach them, the Salmon Fishery Act, 1873, contains some new provisions on the subject. It leaves forty-two hours weekly close time the same as before, if not altered by bye-law; but it empowers the board of conservators by bye-law to do the following things:—

- (1) Extend the weekly close time up to forty-eight hours (*b*);
- (2) Make the weekly close time begin any time after 6 P.M. on Friday and terminate any time before 12 at noon on the following Monday (*b*); but the result of the proviso limiting the weekly close time to forty-eight hours makes it practically impossible it can begin before Friday at midnight.
- (3) Vary the weekly close time so that it may begin on Friday and end on Sunday at midnight, or begin on Saturday at 6 P.M. and terminate on Monday at noon. In fact, vary it as they please, the only restriction being that it must not terminate, if varied at all, before midnight on Sunday (*b*);
- (4) Vary the weekly close time for different parts of the district, so that at one point there may be forty-eight hours, another forty-four, another forty-two; so that it may begin on Friday at midnight in one place, at another on Saturday at noon, at another on Saturday at 6 P.M.

(*b*) 36 & 37 Vict. c. 71, s. 39.

In fact, the conservators are empowered to vary the weekly close time as they please with these limits:—

- (1) It must be not less than forty-two hours;
- (2) It must be not more than forty-eight hours;
- (3) It must not begin earlier than Friday at midnight;
- (4) It must not end earlier than Sunday at midnight;
- (5) It cannot last longer than Monday at noon.

The penalties for fishing during weekly close time are, in any case—

Forfeiture of all fish caught and all moveable nets, or instruments used in catching or attempting to catch them;

A penalty for a first offence not exceeding 5*l.*, and a further penalty of not exceeding 1*l.* in respect of each fish caught; for a second offence a penalty not less than 2*l.* 10*s.* in the whole nor more than 5*l.*, and not less than 10*s.* nor more than 1*l.* in respect of each fish caught; for a third offence of not less than 5*l.* in the whole, and not exceeding 5*l.* and 1*l.* for each fish caught; and for a fourth of not less than 5*l.* and 1*l.* for each fish caught (*c*).

On the second and on every subsequent conviction a licensee forfeits his licence (*d*).

The penalties do not apply to the owner of any putts or putchers if he lets down a net in such a

Limits of alteration.

Penalties for fishing during weekly close time.

Exception in favour of putts and putchers.

(*c*) 24 & 25 Vict. c. 109, s. 21.

(*d*) 28 & 29 Vict. c. 121, ss. 56 and 57.

way or uses such a device as the Home Office approves, so as to prevent salmon passing into the putchers during the weekly close time (c).

No penalty
need be im-
posed by bye-
law.

As in the case of the annual close time, no penalty need be imposed by any bye-law varying the weekly close time, as the Salmon Fishery Act, 1873, provides that all the penalties imposed by the Salmon Fishery Acts, 1861 to 1873, shall apply to the varied or altered weekly close time (d).

Free passage
to be left
through cribs
or traps
during
weekly close
time.

Every proprietor or occupier of a fishery must, during the weekly close time, maintain a clear opening of not less than four feet in width from the bottom to the top through all cribs, boxes or cruives for taking salmon within his fishery, and a free space of that width must be effectually secured for the passage of fish up and down through each box, crib or cruive, whether used for the purpose of fishing or not, and to maintain such opening the inscales and rails of all boxes, cribs or cruives are to be removed. The penalties for not doing so are in every case a forfeiture of all fish taken, and in every conviction after the second a forfeiture of licence; for a first offence a penalty not exceeding 5*l.*, and a further penalty not exceeding 1*l.* for each fish; for a second offence of not less than 2*l.* 10*s.* nor more than 5*l.*, and not less than 10*s.* nor more than 1*l.* in respect of each fish, but it is not compulsory to fine more than 2*l.* 10*s.* in all; for the third of not less than 5*l.* and 1*l.* in respect of each fish caught, but it is not compul-

(c) 24 & 25 Vict. c. 109, s. 21.

(d) 36 & 37 Vict. c. 71, s. 4.

sory to fine more than 5*l.* in all; for a fourth and every subsequent offence of not less than 5*l.* nor less than 1*l.* for each fish, or imprisonment. In the case of *Palmer v. Tucker* (e), which was a prosecution for taking salmon during the weekly close term, a bystander took out of the water what he alleged to be a dead fish. It had been accidentally caught during the weekly close time and returned to the water, and the justices convicted him of taking a fish during the weekly close time under section 21 of the Salmon Fishery Act, 1861. Against this decision the defendant appealed, but the court held that there being evidence from which the magistrates might assume the fish was alive, and they in fact having assumed so, that the appellant was rightly convicted of taking a salmon during the weekly close time.

*Palmer v.
Tucker.*

If any person during the weekly close time places any obstruction, uses any contrivance, or does any act to deter salmon passing up a river, except fishing for fish other than salmon in a lawful way, he is liable to a penalty for a first offence of not exceeding 5*l.*; for a second offence not less than 2*l.* 10*s.* and not exceeding 5*l.*; for a third of not less than 5*l.*; and if a licensee, for a second and subsequent offence, forfeiture of licence (f).

Obstruction
to salmon
during
weekly close
time.

SECT. 3.—*Nightly Close Time.*

To carry out more effectually the principle of the Salmon Fishery Act, 1861, that all the pro-

Night net-
ting.

(e) Not reported.

(f) 36 & 37 Vict. c. 71, s. 16.

prietors in a fishery district are entitled to a share of clean-run fish, the Salmon Act, 1873, has given boards of conservators power by bye-law to prohibit netting at night in inland waters. It is well known that salmon travel principally at night, and that the night netter catches the fish while on their journey up the river. To give the fish a chance of escaping, the conservators may now make a bye-law to prohibit the use in their district in any inland water of any net, except a landing net or a net for taking eels, between the expiration of the first hour after sunset and the last hour before sunrise (*f*).

As in all the other bye-laws the penalty for fishing at night in breach of it will be not exceeding 5*l.* for the first offence, not less than 2*l.* 10*s.* nor more than 5*l.* for the second, not less than 5*l.* for the third, and on conviction of a second or any subsequent offence forfeiture of licence.

Night netting on the Severn.

It may be mentioned that the prohibition of night netting is but a return to the old law that has been in force for nearly a century on the Severn. By the Severn Act, 18 Geo. 3, c. 33, night netting was forbidden; the Salmon Fishery Act, 1861, however, repealed so much of the Severn Act as related to salmon: thus on that river there was this curious anomaly—night netting for salmon was legal, night netting for all other kinds of fish illegal.

It may be noticed that this, though one of the most important of the bye-law clauses, is not one

(*f*) 36 & 37 Vict. c. 71, s. 39.

where a compulsory inquiry can be had; it is in this case purely discretionary with the secretary of state whether he will grant an inquiry or not. It also seems that the bye-law is an absolute prohibition against all netting whether with fixed or moveable nets, and so will, to a certain extent, apply to fixed engines, such as stop nets, if used in inland waters. The bye-law applies to fresh water only; tidal waters do not come within its purview.

Applies to
fixed engines.

SECT. 4.—*Exportation of Fish.*

After the Salmon Fishery Act, 1861, was passed, and the sale of salmon or the possession of salmon for sale during the annual close time prohibited, the law was frequently evaded by sending salmon caught here during close time to France to be sold there. To put a stop to this practice the Salmon Acts Amendment Act, 1863 (*g*), was passed, which after reciting in the preamble that the sale of salmon in England is prohibited between the 3rd day of September and the 2nd day of February; in Ireland during the time the capture of salmon is prohibited in any fishery district; in Scotland between the commencement of the latest and the termination of the earliest annual close time fixed for any district; and in the Tweed between the 14th day of September and the 15th day of February, and that the law was evaded by

Exportation
of salmon.

26 Vict. c. 10.

(*g*) 26 Vict. c. 10.

the exportation for sale in France and other foreign countries of salmon that could not legally be sold within the limits of the United Kingdom, proceeded to enact that no unclean or unseasonable salmon, and no salmon caught during the time at which the sale of salmon is prohibited in the district where it is caught, shall be exported or entered for exportation from any part of the United Kingdom to any place not part of the United Kingdom, under a penalty not exceeding 5*l.* a fish and the forfeiture of all salmon so exported or entered for exportation (*f*).

Onus probandi.

In order to make conviction easier between the 3rd of September and the 2nd of February, a period extended by a subsequent act to the 3rd of September and the 30th of April (*g*), the onus of proving that any salmon were legally entered for exportation is thrown upon the person entering them.

Provisions of the Salmon Fishery Act, 1865, as to the exportation of salmon.

By the Salmon Fishery Act, 1865 (*h*), it is provided that all salmon intended for exportation are to be entered at the intended place of exportation with the officer of customs before shipment; and any salmon shipped, exported or brought to any place for exportation between the 3rd of December and the 2nd of February, extended by a subsequent act to the 30th of April (*g*), contrary to this section, are to be forfeited; and the person shipping or bringing the same for exportation is liable to a

(*f*) 26 Vict. c. 10, s. 3.

(*g*) 33 & 34 Vict. c. 33.

(*h*) 28 & 29 Vict. c. 121, s. 65.

penalty not exceeding 2*l.* for every salmon. The officer of customs is empowered to open any parcel he suspects contains salmon, and detain any salmon until legal proof is given of the fish being legally exported; and if before that is done the fish becomes unfit for human food it may be destroyed. It was found that, notwithstanding these stringent regulations, at the opening of the fishing season a large number of unclean and unseasonable salmon were still exported to France; and as the onus of proving that they were so rested with the prosecutor, the Salmon Acts Amendment Act, 1870, to make further provision for preventing the exportation of salmon that could not legally be sold within the limits of the United Kingdom, extended the operation of the Salmon Acts Amendment Act, 1863, and the sixty-fifth section of the Salmon Fishery Act, 1865, from the 2nd of February to the 30th of April, so that the law on the subject now stands as follows:—

- (1) No unclean or unseasonable salmon may be exported, or entered for exportation, at any time from any part of the United Kingdom to parts beyond the seas (*i*): Rules as to the export of salmon.
- (2) No salmon caught during the time at which the sale of salmon is prohibited in the district where it is caught may be exported, or entered for exportation, from any part of the United Kingdom to parts beyond the seas (*k*):

(*i*) 26 Vict. c. 10, s. 3.

(*k*) *Ibid.*; 33 & 34 Vict. c. 33, s. 1.

- (3) The onus of proving that any salmon exported, or entered for exportation, between the 3rd of September and the 30th of April following, is not unclean and unseasonable rests with the exporter (*k*):
- (4) The onus of proving that the capture of salmon for sale was lawful when the salmon exported, or entered for exportation, was caught between the 3rd of September and the 30th of April following rests with the exporter (*l*).

Between those dates all the complainant has to do to secure a conviction is to prove that the salmon were exported, or entered for exportation. The penalty on exporting, or entering for exportation, any salmon, in contravention of these rules, is 5*l.* for each fish and the forfeiture of all the salmon. It would, however, seem doubtful if the forfeiture extends to the boxes or packages containing the fish. These four rules apply to the whole of the United Kingdom, and only to salmon exported abroad, not to salmon sent from Ireland to England, or Scotland to England.

The following rules relate only to salmon exported from England and Wales wherever they may be sent:—

- (1) All salmon intended for exportation are to be entered for that purpose with the proper officer of customs at the port or place of exportation before shipment (*m*):

(*k*) 26 Vict. c. 10, s. 3; 33 & 34 Vict. c. 33, s. 1.

(*l*) 33 & 34 Vict. c. 33, s. 2.

(*m*) 28 & 29 Vict. c. 121, s. 65.

- (2) Between the 3rd of September and the 30th of April following, any salmon shipped or exported or brought to any wharf, quay or other place for exportation, and not entered with the proper officer of customs, are forfeited (*n*):
- (3) Between the 3rd of September and the 30th of April, the person shipping, exporting or bringing for exportation, any salmon not previously entered, is liable to a penalty of 2*l.* per salmon (*o*):
- (4) Between the 3rd of September and the 30th of April, any officer of customs may open any parcel entered, or intended for exportation, or brought to any quay, wharf or other place for that purpose, he suspects to contain salmon (*n*):
- (5) Between the 3rd of September and the 30th of April, any officer of customs may detain any salmon entered, or intended for exportation, or brought to any quay, wharf or other place for that purpose, until proof is given that the exportation of such salmon is legal (*n*).

And if, before such proof is given, the salmon becomes unfit for human food, the officer of customs may destroy the same (*n*).

(*n*) 28 & 29 Vict. c. 121, s. 65.

(*o*) Ibid.; 33 & 34 Vict. c. 33, s. 2.

Statutes as to Close Time.

1. ANNUAL.

"Annual
close season:"

"Annual close season" shall mean the annual close season for all kinds of salmon fishing except by rod and line applicable to and in force in the fishery district or place in which any offence charged shall be committed, and all penalties, forfeitures, proceedings, powers and things described in the seventeenth and twentieth sections of the Salmon Fishery Act, 1861, as applicable to the periods therein specified, or intended to be specified, as the annual close season, shall be deemed to apply to the annual season, as it may have been or shall be lawfully varied from time to time in each fishery district respectively:

"Close season
for rods."

"Close season for rods" shall mean and include the annual season during which at any particular place it is or shall be unlawful at that place under the provisions of the Salmon Fishery Acts, 1861 to 1873, to fish for, kill, take, or destroy, or attempt to kill, take, or destroy, any salmon with a single rod and line (*g*).

Restrictions as to Times of Fishing.

Close time.

No person shall fish for, catch, or attempt to catch or kill salmon between the days hereinafter mentioned (which interval is herein referred to as the close season); that is to say, between the first day of September and the first day of February following, both inclusive, except only that it shall be lawful to fish with a rod and line between the first day of September and the first day of November following, both inclusive; and any person acting in contravention of this section shall forfeit any salmon caught by him, and shall, in addition thereto incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds in respect of each salmon so caught (*r*); and any net or moveable instrument used in committing such offence, and the convicting justices shall direct the same to be sold or destroyed, and the proceeds of such sale shall be paid to the conservators of the district (*s*).

(*g*) 36 & 37 Vict. c. 71, s. 4.

(*r*) 24 & 25 Vict. c. 109, s. 17.

(*s*) 28 & 29 Vict. c. 121, s. 58.

A board of conservators may by bye-law alter the commencement and termination of the annual close season as to the whole or part of the district, so that such close season, when so altered, shall not be less than one hundred and fifty-four days, for all modes of salmon fishing, except with rod and line, and shall not commence later than the first of November in each year, and as regards fishing with a rod and line, so that such close season shall not be less than ninety-two days, and shall not commence later than the first of December in each year (f).

Board by bye-law may vary close time.

In a salmon river situate in a fishery district subject to a board of conservators no person shall fish for, catch or attempt to catch, or kill any trout or char between the second day of October and the first day of February following, both inclusive; and any person wilfully killing any trout or char in any such river as aforesaid during such interval as aforesaid shall forfeit any trout or char caught by him, and shall, in addition thereto, be liable to a penalty not exceeding two pounds for each offence: Provided always, that nothing herein contained shall apply to any person having in his possession trout or char, or trout or char roe, for the purpose of artificial propagation or other purpose, if such person has the permission in writing of the board of the district in which the river runs from whence such trout, char, or trout or char roe, has been taken to catch such trout or char, and to have in his possession such trout or char, or trout or char roe, for the purposes aforesaid (u).

Close time for trout and char.

No person shall buy, sell, or expose for sale, or have in his possession for sale, any salmon or part of any salmon between the third day of September and the first day of February following, both inclusive. And any person acting in contravention of this section shall forfeit any salmon or part of any salmon so bought, sold, or exposed for sale, or in his possession for sale, and shall incur a penalty not exceeding two pounds for every such salmon or part of any salmon. But nothing herein contained shall apply to any person buying, selling, or exposing for sale or having in his possession for sale any salmon which has been cured, salted, pickled, or dried beyond the limits of the United Kingdom, or if within the limits of the United Kingdom between the first day of February and the third day of November in any year, or any clean fresh salmon caught within the limits of

Penalties on selling fish during close time.

(f) 36 & 37 Vict. c. 71, s. 89.

(u) 28 & 29 Vict. c. 121, s. 64.

the Salmon Fishery Acts, provided its capture by any net, instrument, or device other than a rod and line, was lawful at the time and in the place where it was caught, or to any clean fresh salmon caught at any time beyond the limits of the Salmon Fishery Acts, provided its capture by any net, instrument, or device other than a rod and line, if within the United Kingdom, was lawful at the time and in the place where it was caught; but the burden of proving that any clean fresh salmon so bought, sold, exposed for sale, or in the possession of any person for sale, was captured abroad or lawfully captured within the United Kingdom, shall lie on the person selling or exposing for sale, or having in his possession for sale any such salmon; and the burden of proving that any cured, salted, pickled, or dried salmon was cured, salted, pickled, or dried elsewhere than in the United Kingdom, or if within the United Kingdom, then between the first day of February and the third day of November in any year, shall lie upon the person in whose possession for sale such salmon is found (*x*).

Penalty on
selling trout
or char
during close
time.

No person shall buy, sell, or expose for sale, or have in his possession for sale any trout or char between the second day of October and the first day of February following, both inclusive; and any person acting in contravention of this section shall forfeit any trout or char so bought, sold, or exposed for sale, or in his possession for sale, and shall incur a penalty not exceeding one pound for every such trout or char (*y*).

Removal of
fixed engines
during close
time.

The proprietor or occupier of every fishery for salmon shall, within thirty-six hours after the commencement of the close season, cause to be removed and carried away from the waters within his fishery the inscales, hecks, tops, and rails of all cruives, boxes, or cribs, and all planks and temporary fixtures used for taking or killing salmon, and all other obstructions to the free passage of fish in or through the cruives, cribs, and boxes within his fishery; and if any proprietor or occupier omits to remove and carry away in manner aforesaid any things hereby required to be removed and carried away he shall incur the following penalties; (that is to say,)

- (1) He shall forfeit all the engines or other things that are not removed and carried away in compliance with this section;
- (2) He shall, for every day during which he suffers such

(*x*) 36 & 37 Vict. c. 71, s. 19.

(*y*) Ibid. s. 20.

things to remain unremoved beyond the period prescribed by this act, pay a sum not exceeding ten pounds (y).

No person shall, during the annual close season, in any year, place any obstruction, use any contrivance, or do any act, for the purpose of deterring salmon from passing up a river; and any person acting in contravention of this section shall be liable to a penalty of not exceeding five pounds: provided always, that nothing in this section shall apply to any kind of fishing for fish other than salmon legally practised in any river (z).

Interference
with salmon
in close sea-
son.

2. WEEKLY CLOSE TIME.

The "weekly close season" shall mean the weekly close season for all kinds of salmon fishing except by rod and line applicable to and in force in the fishery district or place in which any offence charged shall be committed, and all penalties, forfeitures, proceedings, powers, and things described in the twenty-first and twenty-second sections of the Salmon Fishery Act, 1861, as applicable to the periods therein specified, or intended to be specified, as the weekly close season, shall be deemed to apply to the weekly close season, as it may have been or shall be lawfully varied from time to time in each fishery district respectively (a).

"Weekly
close season."

No person shall fish for, catch, or kill by any means other than a rod and line, any salmon between the hour of twelve of the clock at noon on Saturday and the hour of six of the clock on Monday morning; and any person acting in contravention of this section shall forfeit all fish taken by him, and any net or moveable instrument used by him in taking the same, and in addition thereto shall incur a penalty not exceeding five pounds, and a further penalty not exceeding one pound in respect of each fish so taken between twelve of the clock at noon on Saturday and six of the clock on Monday morning; but nothing in this section contained shall compel the owner of any putts or putchers to remove or draw up the same during such time as is mentioned in this section, or subject him to a penalty, so that he lets down a net in such manner or uses such other device as the Home Office approves for the purpose of preventing

Weekly close
time.

(y) 24 & 25 Vict. c. 109, s. 20.

(z) 36 & 37 Vict. c. 71, s. 18.

(a) Ibid. s. 4.

salmon passing into the putts and putchers during the time aforesaid (*b*).

Board may vary weekly close time by bye-law.

A board of conservators may by bye-law alter the commencement and termination of the weekly close season as to the whole or part of a district, so that such season shall not commence before six o'clock on Friday afternoon, and not terminate earlier than midnight on the Sunday following, nor continue later than twelve o'clock on the following Monday at noon, such weekly close time in no case to exceed forty-eight hours (*c*).

A free passage to be left through cribs or traps during weekly close time.

The proprietor or occupier of every fishery shall, between twelve of the clock at noon on Saturday and six of the clock on the Monday morning following, maintain a clear opening, of not less than four feet in width from the bottom to the top, through all cribs, boxes, or cruives used for taking salmon within his fishery, so that a free space of that width is effectually secured for the passage of fish up and down through each box, crib, or cruive, whether used for the purpose of fishing or not; and shall, for the purpose of maintaining such opening, remove the inscales and rails of all such boxes, cribs, or cruives; and any person acting in contravention of this section shall incur the following penalties:

- (1) He shall for each offence pay a sum not exceeding five pounds, and a further penalty not exceeding one pound for each fish so taken :
- (2) He shall forfeit every fish caught in contravention of this section (*d*).

Interference with salmon in weekly close season.

No person shall, during the weekly close season, in any year, place any obstruction, use any contrivance, or do any act, for the purpose of deterring salmon from passing up a river; and any person acting in contravention of this section shall be liable to a penalty of not exceeding five pounds: Provided always, that nothing in this section shall apply to any kind of fishing for fish other than salmon legally practised in any river (*e*).

8. NIGHTLY CLOSE TIME.

A board of conservators may by bye-law prohibit the use in any inland water of any net, except a landing net or a net for

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- (*b*) 24 & 25 Vict. c. 129, s. 21.
 - (*c*) 36 & 37 Vict. c. 71, s. 39.
 - (*d*) 24 & 25 Vict. c. 109, s. 22.
 - (*e*) 36 & 37 Vict. c. 71, s. 16.

taking eels, between the expiration of the first hour after sunset and the last hour before sunrise (*f*).

4. EXPORTATION OF SALMON.

No unclean or unseasonable salmon, and no salmon caught during the time at which the sale of salmon is prohibited in the district where it is caught, shall be exported or entered for exportation from any part of the United Kingdom to parts beyond seas, that is, to any place not part of the United Kingdom.

Export of unclean and unseasonable salmon and of salmon caught at certain times prohibited.

All salmon exported or entered for exportation in contravention of this section shall be forfeited, and the person exporting or entering the same for exportation shall be subject to a penalty not exceeding five pounds in respect of each salmon so exported or entered for exportation.

The burden of proving that any salmon entered for exportation from any part of the United Kingdom to parts beyond seas between the third day of September and the thirtieth day of April following is not so entered in contravention of this act shall lie on the person entering the same for exportation (*g*).

All salmon intended for exportation shall be entered for that purpose with the proper officer of customs, at the port or place of intended exportation, before shipment thereof; and any salmon shipped or exported, or brought to any wharf, quay, or other place for exportation, between the third day of September and the second day of April following, contrary to this section, shall be forfeited, and the person shipping or exporting, or bringing the same for exportation, shall be liable to a penalty not exceeding two pounds for every salmon so shipped or exported, or brought for exportation; and any officer of the customs may, between the third day of September and the thirtieth day of April, open any parcel entered or intended for exportation, or brought to any quay, wharf, or other place for that purpose, and suspected by him to contain salmon, and may detain any salmon found in such parcel until proof is given, in manner provided by law, of the salmon being such as may be legally exported; and if the salmon, before such proof is given, become unfit for human food, the officer of customs may destroy the same (*h*).

(*f*) 36 & 37 Vict. c. 71, s. 39, sub-sect. 12.

(*g*) 26 Vict. c. 10, s. 3; 33 & 34 Vict. c. 33, s. 3.

(*h*) 28 & 29 Vict. c. 121, s. 65; 33 & 34 Vict. c. 33, s. 4.

CHAPTER X.

LAW OF FISHING.

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- SECT. 1. PROHIBITION OF KILLING FISH IN CERTAIN WAYS.]
2. FIXED ENGINE.
 3. FISHING WEIRS.
 4. FISHING MILL-DAMS.
 5. PROHIBITION OF KILLING CERTAIN FISH.
 6. POLLUTIONS.
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SECT. 1.—*Prohibition of killing Fish in certain ways.*

Prohibited
ways of
taking
salmon, trout
or char.

ALTHOUGH a person be duly licensed and is fishing during the open season, yet there are certain ways in which the law prohibits salmon to be taken. All ways of taking fish are legal unless prohibited by statute, but no person may do any of the following things:—

- (1) Use or have in his possession any light for the purpose of taking salmon, trout or char (a);
- (2) Use or have in his possession any otter lath or jack, that is, any small boat or vessel, board or stick used for the purpose of running out baits, artificial or otherwise,

(a) 24 & 25 Vict. c. 109, s. 8.

across any portion of any lake or river, whether used with a hand line or as auxiliary to a rod and line, or in any other way (*b*), for the purpose of taking salmon, trout or char (*c*);

- (3) Use or have in his possession any gaff for the purpose of taking any salmon, trout or char, except as auxiliary to angling with a rod and line, during such time of the year as the board of conservators of the district by bye-law allow (*d*);
- (4) Use or have in his possession any stroke-hall, snatch or other like instrument, including any instrument or device, whether used with a rod and line or otherwise, for the purpose of foul-hooking any salmon, trout or char (*e*).

The penalty for using or having in possession any of the above-named instruments is, for the first offence, any sum not exceeding 5*l.*; for the second, any sum not less than 2*l.* 10*s.* nor more than 5*l.*; for a third, not less than 5*l.*, or, at the discretion of the court, imprisonment for any term not less than one nor more than six months, with or without hard labour (*f*).

Any of the above instruments found in a person's possession is forfeited on any conviction, and on a second and every subsequent conviction,

(*b*) 36 & 37 Vict. c. 71, s. 4.

(*c*) 24 & 25 Vict. c. 109, s. 8.

(*d*) 24 & 25 Vict. c. 109, s. 8; 36 & 37 Vict. c. 71, s. 39.

(*e*) 24 & 25 Vict. c. 109, s. 8; 36 & 37 Vict. c. 71, s. 4.

(*f*) 24 & 25 Vict. c. 109, s. 8; 28 & 29 Vict. c. 121, ss. 56, 57.

if the offender is a licensee, his licence is forfeited (*e*).

Using fish roe
as bait.

(5) No person may use any fish roe for fishing (*f*);

(6) No person may have in his possession any salmon, trout or char roe, except with the consent in writing of the board of conservators of the district from which such roe was taken, for the purposes of artificial propagation or other scientific purposes, or he can give a satisfactory reason to the court before whom he is tried for having the roe in his possession (*g*):

Penalty.

Under a penalty of not exceeding 2*l.* for the first offence, not less than 2*l.* for the second, and 2*l.* or imprisonment, at the discretion of the court, with hard labour for any time not less than one month and more than six months, for the third or any subsequent offence.

In all cases any salmon, trout or char roe is forfeited, and the person, if a licensee, on a second and any subsequent offence forfeits his licence.

It will be observed that this section makes it an offence to use any fish roe whatever for the purposes of fishing, but it only provides for the forfeiture of salmon, trout or char roe; hence a person fishing with any other kind of roe, although liable to be fined and imprisoned for a third offence, would not forfeit the roe.

(*e*) 24 & 25 Vict. c. 109, s. 8; 28 & 29 Vict. c. 121, ss. 56 and 57.

(*f*) 24 & 25 Vict. c. 109, s. 9.

(*g*) *Ibid.*; 28 & 29 Vict. c. 121, s. 60.

- (7) No person may take or attempt to take any Mesh of nets.
salmon with a net of less dimensions than
two inches from knot to knot measured on
each side the square, or eight inches all
round each mesh when wet (*h*), unless

The board of conservators of that district have authorized the use of a less mesh (*i*).

The board can vary the mesh by bye-law half-an-inch each way by decreasing it to one and-a-half inches from knot to knot, or increasing it to two and-a-half from knot to knot. But unless it is so varied, two inches is the standard (*k*).

The act is very stringent as to all devices to lessen the mesh of net used; placing two or more nets behind each other so as practically to diminish the mesh of the nets, covering the net used with canvas, or using any other artifice to evade the law as to the mesh of nets, is to be held a contravention of the law (*k*). In a case, *Dodd v. Armour* (*l*), where a person was fishing with a trammel net, which is really three nets, one in the middle with a two-inch mesh and the other two of eleven-inch mesh, one on each side the smaller one, when a fish struck the net the small net passed through the large one and made a purse or bag for the fish, the magistrates found, as a matter of fact, that the eleven-inch mesh outside the two-

*Dodd v.
Armour.*

(*k*) 24 & 25 Vict. c. 109, s. 10.

(*i*) 36 & 37 Vict. c. 71, s. 39.

(*k*) 24 & 25 Vict. c. 109, s. 10.

(*l*) Not reported.

inch net did practically diminish the mesh of the net to under two inches, and they, therefore, convicted the person using the net. On an appeal, the court affirmed the conviction on the ground that the justices were the proper judges of the fact as to the diminution of the mesh, and that, therefore, there was nothing for them to do but to affirm the conviction, no question of law being raised.

Effect of the
decision.

This decision is often cited as having decided the point that trammel or armoured nets are illegal, but in reality it decided nothing of the kind. What it did was this: it decided that a trammel net with a two-inch mesh in the middle was illegal, as being practically a net with a less mesh than two inches from knot to knot. But it left untouched the question as to the legality or illegality of a trammel net with an inside mesh of over two inches. That point has never been decided; all that has been is that a trammel net with a middle net of two inches was illegal for taking salmon, as being practically of a less mesh than two inches from knot to knot.

Penalties.

The penalty for using a net with a less mesh than two inches is, for every offence, forfeiture of all nets and tackle (*l*); and also for a first offence a penalty of not exceeding 5*l*., for a second offence a penalty of not less than 2*l*. 10*s*. nor more than 5*l*., for a third of not less than 5*l*. (*m*); and for a second and every subsequent offence forfeiture of

(*l*) 28 & 29 Vict. c. 121, s. 58.

(*m*) 24 & 25 Vict. c. 109, s. 11.

licence (n). If the board vary the size of mesh by bye-law, the pecuniary penalty and forfeiture of licence for a second and subsequent offence can only be imposed, as there is no power under the bye-laws to make forfeiture of nets part of the penalty for breach of the bye-laws, the power is limited to imposing a pecuniary penalty. So that if a board by bye-law declares that only two and-a-half-meshed nets may be used in the district, the penalty is 5*l.*; if they leave matters as they are, and a person use a one and-a-half inch mesh, the penalty is 5*l.* and forfeiture of the net.

- (8) No person may shoot any seine or draft net for salmon in a river across more than three-fourths of the width of the river within one hundred yards of any seine or draft net that is already shot and being drawn, and not fully drawn in and landed, under a penalty of not exceeding 5*l.* for the first offence, not less than 2*l.* 10*s.* nor exceeding 5*l.* for the second, not less than 5*l.* for the third, and forfeiture of licence for the second and every subsequent offence (o);

Shooting
draft nets.

- (9) No person may catch, kill, or attempt to catch or kill, except with rod and line, or disturb, or attempt to scare or disturb, any salmon,—

Fishing at
mills and
below weirs.

- (i) Within 50 yards above, and 100 yards below, any weir, dam or artificial

(n) 28 & 29 Vict. c. 121, s. 56.
(o) 36 & 37 Vict. c. 71, s. 14.

- obstruction which hinders or retards the passage of salmon ;
- (ii) In waters under or appurtenant to any mill ;
 - (iii) In the head race or tail race of any mill ;
 - (iv) In the waste race or pool communicating with any mill race ;
 - (v) In any artificial channel connected with any weir or obstruction ;
 - (vi) No person shall fish with a rod and line in such a manner or at *such a* place near any weir or obstruction as to wilfully scare or hinder any salmon from passing through any fish pass or over any part of such weir or obstruction usually available to salmon for the purposes of a passage (*p*).

But none of these provisions apply to the following cases :—

- (1) If the weir, dam or artificial obstruction has or shall have attached to it a fish pass of such form and dimensions as may be approved by the Home Office, and such fish pass has constantly running through it such a flow of water as will enable salmon to pass up and down it, unless the board of conservators shall have fully compensated the persons entitled to fish in such waters

(*p*) 24 & 25 Vict. c. 109, s. 12; 36 & 37 Vict. c. 71, s. 17.

for the right of fishing. The compensation to be settled, in case of dispute, either by two justices, if under 50*l.*, or by arbitration in the manner directed in the Lands Clauses Consolidation Acts (*q*);

- (2) To any legal fishing mill-dam not having a crib, box or cruive;
- (3) To any fishing box, coop, apparatus, net or mode of fishing in connexion with, and forming part of, such weir or obstruction for the purpose of fishing (*q*).

The penalty for taking or disturbing salmon in such places is, for the first offence, not exceeding 5*l.*, and not exceeding 1*l.* for every salmon so caught; for a second offence, a fine of not less than 2*l.* 10*s.* in the whole, and not exceeding 5*l.*, and 1*l.* in respect of each salmon caught; for a third, not less than 5*l.* in the whole, and not exceeding 5*l.*, and 1*l.* for each salmon caught; for a fourth and every subsequent offence, of not less than 5*l.*, and 1*l.* for each salmon caught (*q*). *Penalties.*

On every conviction all boxes, baskets, nets, rods, implements and devices used or placed for catching the fish are forfeited (*q*), and on a second and every subsequent conviction the offender, if a licensee, forfeits his licence (*r*).

In the case of *Moulton v. Wilby*, the distinction between fixed engines under the 11th section, and *Moulton v. Wilby.*

(*q*) 36 & 37 Vict. c. 71, s. 17; see ante, p. 154.

(*r*) 28 & 29 Vict. c. 121, s. 56.

*Moulton v.
Wilby.*

fishing mill-dams under the twelfth, was fully discussed. In that case Ralph Moulton (the appellant) and two others were summoned to appear before the justices, "for that they, the said R. Moulton, &c., did, on the 26th day of May last, catch in the salmon cage on the River Dee, in the city of Chester, and within fifty yards below a dam then existing, six salmon, otherwise than by rod and line, contrary to the provisions of sect. 12 of the 24 & 25 Vict. c. 109." It was proved by the complainant Wilby (the respondent, who was a watcher for the conservators of the River Dee), that on the said 26th May defendants took, by means of a landing net, six salmon out of the salmon cage in which the fish were then impounded; that the salmon cage was within fifty yards below a fishing mill-dam (such as is mentioned in sect. 4 of the said act) on the River Dee; that the said fishing mill-dam had not a fish pass attached thereto, in accordance with sect. 12 of the 24 & 25 Vict. c. 109; that salmon had been taken in the same way before the passing of the said last-mentioned act; that since the passing of the said act movable bars had been placed in the salmon cage, which bars, when up, constituted a clear opening for salmon to pass through the cage, both up and down, according to the provisions of sect. 22 of the said act, and that the bars were up on the said 26th of May. For the defence it was proved by the defendant (the now appellant), and admitted by the complainant, that there was an ancient right of fishing in the aforesaid salmon

cage by charter, grant or immemorial usage, and that the defendant, but for the 24 & 25 Vict. c. 109, was entitled, as tenant to R. Topham, the owner of the fishery, to exercise that ancient right. *Moulton v. Wilby.*

From a plan annexed to the aforesaid case, it appeared that the said weir or fishing mill-dam, to the masonry connected with which the salmon cage was attached, stood across the River Dee just above the old Dee bridge, beginning from the left bank, and stretching thence a few yards down the stream diagonally to the right shore of the river. At the lower end of this diagonal were the Dee Mills, belonging to Colonel Wrench, to whose ancestor the weir and mills at both its ends originally belonged. At the upper end of the diagonal were several mills, between which was a large water-wheel, and a flood-gate for regulating the supply of water to the mills. Over this wheel, or through the flood-gate, the water flowed between solid masonry till it reached the apex of the salmon cage, through the receding side bars of which the water flowed into the stream below. The fish, on ascending the river to spawn, enter the open space of this angular cage, and, passing through an opening at its apex, find themselves in a trap, from which there is no escape, unless they discover again the opening at the apex of the cage, or can force their way through the flood-gate when open. It was in this cage, or trap, that the salmon in question were taken by means of a net. Upon the above facts the justices convicted the

*Moulton v.
Wilby.*

defendant Moulton of an offence against the said 12th section, and adjudged him to pay a penalty, against which conviction and penalty he now appealed.

In giving judgment, Lord Chief Baron Pollock said: "We are all agreed that the appeal in this case must be dismissed. Sect. 11 has nothing to do with the question. That section refers to fixed engines, and contains a proviso that it should not prevent any ancient right of fishing by immemorial usage. There can be no doubt that this was a mode of fishing by immemorial usage. But sect. 12 says this: 'No person shall catch or attempt to catch, except by rod and line, any salmon, &c., within fifty yards below any dam, unless such mill or dam has attached thereto a fish pass of such form and dimensions as may be approved of by the Home Office.' This weir or dam had no fish pass, and therefore the appellant had no right to catch salmon with a net within fifty yards below it. Consequently the conviction was proper, and the appeal must be dismissed."

Mr. Baron Martin said: "I am now satisfied, although at first I had some doubt about it, that Mr. M'Intyre's construction is correct. I am now satisfied that the true construction of the second head of sect. 12 is an absolute prohibition of fishing, otherwise than with rod and line, within fifty yards of the dam, unless it has a fish pass. And unless the leave of the owner of the dam can be obtained to the having a fish pass in the dam, there is an absolute prohibition. The conviction is right."

Mr. Baron Bramwell: "I am of the same opinion. Sect. 11 applies to nothing connected with fishing weirs or fishing mill-dams. Then comes sect. 12, which first prohibits the use of all dams for the purpose of catching, or facilitating the catching of salmon, except such as were of old lawfully used for that purpose; and prohibits, secondly, the use of all fishing weirs or fishing mill-dams for the catching, or facilitating the catching of salmon, although of old lawfully used for that purpose, unless they have a fish pass. But this dam has no fish pass. My brother Martin doubts whether the weir is said to be used for the purpose of catching salmon, when the ownership of the weir and fishery is in different persons. My own opinion is, that it is used for that purpose, although it does not belong to the man himself. The weir is there to stop the fish from going in any other direction. I think, therefore, they cannot evade the provisions of this act by putting the cage fifty yards further down the river. There is, doubtless, this difficulty, that when the whole of the weir belongs to somebody who is not the owner of the fishery, you are taking away the right of the owner of the fishery. This must evidently be so in some cases.

"Mr. M'Intyre has shown that you cannot fish with a net, but only with a rod and line, within fifty yards below any dam that has not a fish pass. But I have no doubt that it will not eventually be found any particular hardship. I think, therefore, the construction of the act is in favour of the respondent."

*Moulton v.
Wilby.*

*Mon'lon v.
Wilby.*

Mr. Baron Wilde: "I think so too. There is this alternative. If this engine is a portion of the dam, it comes within the first part of sect. 12. In that case it is a fishing mill-dam that has been used for the purpose of facilitating the catching of salmon, and that is without a fish pass. If the engine is not a portion of the dam so as to come within the first part of the section, the appellant evidently comes within the second part, for he has caught the fish with a net within fifty yards below a dam without a fish pass."

Salmon in
fish passes.

(10) No person may take any salmon passing through a fish pass under a penalty not exceeding 5*l.* for the first, not less than 2*l.* 10*s.* nor more than 10*l.* for the second, not less than 5*l.* nor more than 10*l.* for the third, not less than 10*l.* for the fourth; and will on each conviction forfeit all the salmon taken, and all instruments by which the salmon were caught, and on a second and every subsequent offence his licence (*x*);

Eels.

(11) No person may hang, fix or use in any salmon river any basket, net, trap or device between the 1st January and the 24th June for taking the fry of eels, except eel baskets, not more than ten inches in diameter in any part, and made to be fished with bait, and not used at any dam or weir (*y*);

Obstructing

(12) No person shall place in any inland water

(*x*) 24 & 25 Vict. c. 109, s. 23.
(*y*) 36 & 37 Vict. c. 71, s. 15.

any device to catch or obstruct fish descending the stream (*z*);

fish descending the stream.

- (13) No person shall at any time place upon the apron of any weir any basket, trap or device for taking fish, except wheels or leaps for taking lamperns between the 1st August and the 1st of March (*z*).

Placing baskets on weirs.

If any one fixes any baskets, nets or traps for eels or eel fry, or obstructs fish descending the stream, or places any basket, trap, or device on any weir, he is liable to the following penalties:—

Penalties.

For the first offence, not exceeding 10*l.* a day for every day during which he allows such engines to be used; for a second offence, not less in the whole than 2*l.* 10*s.*, and not exceeding 2*l.* a day; for a third, not less in the whole than 5*l.*, and not exceeding 2*l.* a day; for the fourth, not less than 2*l.* a day, and if a licensee, on a second and on every subsequent conviction, he forfeits his licence (*z*).



SECT. 2.—*Fixed Engines.*

One of the most difficult questions in the whole salmon fishery law is that of fixed engines. The Act of 1861 forbids absolutely any new fixed engines to be used (*a*), and only allows ancient rights or modes of fishing lawfully exercised at the time of its passing,—a period, however, extended by the Act of 1865 (*b*) to the years 1857, 1858, 1859, 1860

(*z*) 36 & 37 Vict. c. 71, s. 15.

(*a*) 24 & 25 Vict. c. 109, s. 11.

(*b*) 28 & 29 Vict. c. 121, s. 39.

and 1861. And hence arise two questions:—
 (1) What is a fixed engine? and (2) What is an ancient right or mode of fishing lawfully exercised at the time of passing the Salmon Fishery Act, 1861, or in one of the four preceding years, by virtue of any grant, charter, or immemorial usage?

Definition of
fixed engine.

As to the first, a fixed engine is defined by statute to be:—

- (1) Stake nets, bag nets, putts, putchers and all fixed implements or engines for catching or for facilitating the catching of fish (*c*):
- (2) A net secured by anchors or otherwise temporarily fixed to the soil (*d*):
- (3) Any net or other implement for taking fish fixed to the soil or made stationary in any other way (*e*):
- (4) Any net placed or suspended in any inland or tidal waters unattended by the owner, or any person duly authorized by the owner to use the same, for catching salmon, and all engines, devices, machines or contrivances, whether floating or otherwise, for placing or suspending such nets or maintaining them in working order, or making them stationary (*f*).

So that a fixed engine may be defined as any stake net, bag net, putt, putcher or stop net, any

(*c*) 24 & 25 Vict. c. 109, s. 4.

(*d*) Sect. 11.

(*e*) 28 & 29 Vict. c. 121, s. 39.

(*f*) 36 & 37 Vict. c. 71, s. 4.

net made stationary in any way, any net which is left unattended during the time it is fishing, and all contrivances for keeping any such net in fishing order or stationary.

The chief decisions upon the point as to what is a fixed engine have been as follows:—

Decisions as to fixed engines.

Under the Salmon Fishery Act, 1861, definition 1 and 2, the following case occurred:—

A person named Thomas (*g*) set three nets for catching salmon in the River Tivy; the nets were placed about twelve yards a-part, and extended to nearly the centre of the river. Each of the nets was attached at one end to a stone which was on bank of the river, and which weighed from six to twelve pounds, and kept the net quite firm. At the other end the net was kept up with corks with lead to keep it down in the river. The river was three or four feet in depth, and it was doubtful whether the net would reach the bottom. The net was six yards in length, and one yard sixteen inches in depth. The nets do not remain the same length in the water,—they contract very much. They are always placed in quiet water and not in a current. When a salmon touches the net, the stone gives way, and the net moves, and gathers together, and the salmon gets entangled and dies, and (in the words of one witness) “the salmon is rolled up like a rabbit in a net. I do not know whether such a net would catch salmon without a stone. It requires a weight to hold the net and

Thomas v. Jones.

(*g*) *Thomas v. Jones*, 11 L. T., N. S. 450; 5 B. & S. 916; 11 Jur., N. S. 306; 34 L. J., M. C. 45; 13 W. R. 154.

*Thomas v.
Jones.*

keep it extended." The effect of nets thus set would be to catch and scare salmon. This part of the Tivy was tidal and navigable. The magistrates being of opinion that the nets in question were fixed engines within section 11 of 24 & 25 Vict. c. 109, convicted Thomas, and fined him 1*s*. Against this decision Thomas appealed, and the question for the Court of Queen's Bench was whether, under the circumstances, the conviction was right. For the appellant it was contended that the net in question could not be a fixed engine, as it moved and left a clear passage as soon as one fish came into it, or if any one on the bank accidentally knocked the stone off.

For the respondent it was urged that it was a fixed engine working night and day when men were asleep. If human labour is employed the fish have a chance of escape; for men tire, but machines never. And in support of this view the statute 2 Hen. 6, c. 15, was cited, which, after prohibiting the use of nets, engines called trinks, and all other nets which be and are wont to be fastened and hanged continually day and night, provided that (*h*) it should be lawful for the possessors of the said trinks, if they be of assize, to fish with them at all reasonable times, drawing and pulling them by hand as other fishers do with other nets, and not fastening or tacking the said nets to posts, boats and anchors, continually to stand as afore is said.

(*h*) Sect. 3.

The court (Crompton, Mellor and Shee, J.J.) *Thomas v. Jones.* held that the conviction was wrong; the stone was not an anchor fixed into the ground, and it could not be said that a net moored at one end to a bank by a moveable stone, cleared away when the first fish comes, was a fixed engine within the Act of 1861.

Mr. Justice Crompton observed that there was nothing in the act to prevent a person using two moveable engines, so as to have the same effect as one fixed one; but Mr. Justice Mellor intimated that if the intention and effect of the use of the net were continuously to block up the river the conviction might be right.

It is very questionable how far this decision is now law; the definition in the Act of 1873 of the net being unattended by the owner, and that in the Act of 1865, made stationary in any other way, would seem to meet this case, and, in effect, to restore the old distinction in the act of Hen. 6, that if a net is not really worked by hand it is a fixed engine; the question as to its being really worked by hand or not being the ground of the decision in *Gore v. The Special Commissioners of English Fisheries* (i).

How far the dictum of Mr. Justice Crompton, as to moveable nets being practically converted into fixed engines, is good law remains to be seen.

The decision in *Thomas v. Jones* was much commented upon and questioned in *Odling v. Wild* (k), *Odling v. Wild.*

(i) L. R., 6 Q. B.

(k) 14 L. T., N. S. 402.

*Odling v.
Wild.*

which may be considered to have greatly shaken it if not overruled it.

It there appeared from the evidence of the respondent, Wild, a watcher in the employ of the Test Fisheries Association, that on the 2nd July he saw the appellant in a boat with two buoys, at Horsehead, between the Redbridge and Eling Channels. It was morning, and the half-tide was in about an hour's flood. That the appellant drove in a stake about the size of a fold shore on the mud-land on the western side of the river. The stake was about fourteen or fifteen feet long, and pointed with iron at the bottom. There was a rope fixed to the net and then made fast to the stake. The net was then in the boat. They had an anchor with a rope, and a buoy on to it about the middle of the channel. They rowed from the stake to the buoy and picked it up, tailing out the net at the same time. The net had corks at the top and lead at the bottom to sink it. They held on to the buoy about twenty minutes, after which they rowed the boat round (tailing out the remainder of the net) to the stake, and then hauled the stake up, and then the net, catching about half a dozen salmon. On the part of the appellant it was admitted that he was the owner of the net.

For the defence it was contended that a net used as above described is not a fixed engine within the meaning of the 11th section of the Salmon Fishery Act, 1861, explained by the 39th section of 28 & 29 Vict. c. 121. Witnesses were called who proved that when they went fishing

they stuck a pole into the mud, and went round with the net. They remained there till they saw the fish jump; they then shot out the remainder of the net and fixed it to another pole, to which they fastened the boat, and then hauled the net into the boat. These stakes were not permanently fixed. They could not fish in any other way in the river. One of the poles, the one that remained, was the one they made the boat fast to. The pole was taken up at every haul.

*Odling v.
Wild.*

The justices considered that a net thus secured was a fixed engine within the meaning of the 11th section of the Salmon Fishery Act, and thereupon convicted the appellant, imposing the penalty of 5*l.* and costs. Against this the defendant appealed.

The following question was submitted to this court:—"Whether a net secured at one end to a pole such as described, temporarily fixed to the soil on the margin of the channels of a river, and of which about one-half was stretched across the channel at low water from a boat made fast to a buoy attached to an anchor, and in which the fisherman waited for a considerable time, and then let out the remainder of the net and rowed round to the said pole, thus taking a sweep of the river as above described, is a fixed engine within the meaning of the 4th and 11th sections of the Salmon Fishery Act, 1861."

The court held that it was a very clear case on that point, Mr. Justice Blackburn observing, that probably the legislature had heard of the case of

Thomas v. Jones (*k*), and put in an amended interpretation of what was intended by fixed engines to meet it,—“made stationary in any other way.”

Gore v. The Special Commissioners for English Fisheries.

Mode of using stop-nets.

In *Gore v. The Special Commissioners for English Fisheries* (*l*), the question arose as to whether stop-nets were fixed engines. In *Holford v. George* (*m*) the point had been assumed and not decided by the court. The mode of using a stop-net was proved to be as follows:—The fisherman on going out to fish with a stop-net first steadies his boat athwart the current. This he does first by his anchor until he can set in position three long stakes or poles tipped with iron. One of these poles he pushes or works into the bed of the river from one end of the boat in a slanting direction, the second he works in a like manner into the bed of the river from the other end of the boat, and a third pole is generally slanted in a direction transverse to the other two, from one end of the boat. These poles are lashed to the boat with ropes, and the combined effect of the poles, when set and penetrating the bed of the river, is to keep the boat still in one place and to prevent the current carrying it away, or to either side.

When the boat is thus steadied the fisherman puts his net overboard, which is about thirty feet wide at the mouth and tapers to a point. The

(*k*) 11 L. T., N. S. 450.

(*l*) L. R., 6 Q. B.

(*m*) L. R., 3 Q. B. 639.

mouth, which faces the current, is distended by two light poles, called rames, which are tied together at one end with a rope, and which end the fisherman keeps his hand upon when fishing. The rames diverge from this upper end gradually until at their farthest end they stretch out the mouth of the net to its full width of about thirty feet. This stretching is facilitated by a cross stick or stretcher inserted between and fastened to the rames at about seven feet from the upper end, and this prevents the rames closing together.

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Fisheries.*

The rames are about twenty-two feet long, and each lies over the edge of the boat, touching the edge at a distance of about eight feet from the upper end, where the poles converge. When the net is working, the rames point against the current in a slanting direction, and form an acute angle of about twelve degrees with the surface of the water, the lower ends being under water, so as to keep the bottom rope of the net about three or four feet below the surface. The upper ends of the rames meet and are tied together, being pressed upon by the fisherman's hand, as the net and poles are almost self-balanced. The weight of the net and rames rests on the edge of the boat, the fisherman's hand being on the upper end, not to support or work the net, but merely so that he may be quite ready to jerk up the rames at a moment's notice into a horizontal position. A string is attached to the bottom of the net, and the fisherman, holding this string in his hand, feels when a fish enters or strikes the net, and immediately

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jerks the mouth of the net up out of the water so as to prevent the fish from escaping. The upper end of the rames could be equally well kept steady by tying it with a string to a part of the boat; but inasmuch as the fisherman must in any event be in a standing position to jerk up the rames on the instant, while he is so standing his hands or arms generally lean on that end of the rames, and thereby help at the same time to keep the rames steady. In jerking up the rames he uses the edge of the boat on which the rames rest as a fulcrum, but the rames are not tied to the boat. When the rames are raised to a horizontal position they raise with them the mouth of the net out of the water, and so prevent the fish escaping. The net need not and seldom does touch the bed of the river, but it is essential that its weight should rest on the boat, and this is effected by suspending the net to the poles or rames which lie over the edge of the boat. These rames are necessary, first, to distend the net and keep it open; and secondly, to jerk up the mouth of the net instantly when necessary.

This mode of fishing can only be used or adopted when the fisherman is present, and in the manner described.

The fisherman began to fish, as before described, generally from two hours before the ebb to the flood tide, and remained fishing with his boat in position, as above mentioned, from two to three hours at a time. During that period the water was generally at its lowest, and was not, in point

of fact, used for the purpose of navigation, and no evidence was given that any actual obstruction to the navigation was caused by the said stop nets and boats during the time these were used for fishing purposes. The stop nets were set and used in the same spot, such spot being selected from some favourable peculiarity in the current at that place; and the reason given for their being used only immediately before low water was that the current or tide would at other times be so strong as to sweep away the boat and cross-poles, or render it more difficult to steady and fix the boat. It was essential for the working of the net used in the above manner that the boat in which it is used should be fixed or steadied in some way.

*Gore v. Th.
Special Com-
missioners for
English
Fisheries.*

It was contended by the respondents that stop nets were fixed engines, and therefore illegal, unless they had existed before the statute 2 Hen. 6, c. 15. The appellant argued that stop nets were not fixed engines under the circumstances applicable to this special fishery, and were not within the statute 2 Hen. 6, c. 15, nor within the provisions of the Salmon Fishery Acts as to fixed engines, and that the owner of the fishery could use as many as he liked within his fishery.

The commissioners decided that stop nets were fixed engines, but that these special stop nets were legal, and the appellants appealed against the finding of the commissioners as to whether or not stop nets were fixed engines.

Mr. Justice Blackburn, in delivering judgment,

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said:—"The question is simply whether or not this net is a fixed engine; the statute 28 & 29 Vict. c. 121, s. 39, makes fixed engines include any net or other implement for taking fish fixed to the soil, or made stationary in any other way, not being a fishing weir or fishing mill-dam. That this was a net is beyond all doubt, and the question, therefore, is this, whether this net was made stationary, and it is very much, as Mr. Mathews put it, as if there were a bridge across a river and this net had rested on the bridge. On looking at the description of the net we find that it is of a very large size, and no human being would have power to hold up against the tide a net thirty feet wide, and going a considerable distance into the water. It is rested, therefore, on the side of the boat by its own weight, and it is made stationary, for as long as the boat is stationary it remains fixed and stands there. It is admitted that if there were not anything to steady it the net would, from the pressure of the water below, pass under the boat; something there must be to keep it there. If it were tied with a piece of rope it would clearly be made stationary; instead of this the fisherman stands there resting one hand to hold it steady, and it is in consequence of this pressure of the hand upon it that it is fixed; yet notwithstanding that it is a human hand that does it the net is made stationary, and consequently brought within the act. It seems to me as much stationary when the man is there as though it had been left fixed. I do not think that the mere intervention of the hand

would in all cases make the thing stationary; but I think here, when you come to consider whether it is made stationary or not, the quantum or degree is very material. I do not think that a mere casting net that a man throws into the water for a short time could be called stationary, and fixed by the man standing and keeping his hand upon it. If the net itself were stationary and caught a fish because it was kept stationary by mechanical means, the case would be free from doubt. The present case, I think, is very near it; the net is kept there, and it is because of its being kept there that the fish go into it, and when the fish have gone into it the fisherman picks it up. But it is by means of its being stationary that the fish are caught. I think the commissioners are right, and that judgment should be for the respondents."

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Fisheries.*

Mr. Justice Lush said: "I am of the same opinion. I think it is impossible to say that this net was not made stationary. It was not fixed to the side of the boat it is true, but if it is made stationary in any other way it comes within the act. If these poles or rames had been tied to the boat there cannot be a doubt that the net would have been made stationary by such mere mechanical means. But if instead of that the tops of the poles are steadied by human agency, that is not excluded at all by this definition, and the case is equally brought within the terms of the statute."

These are the chief decisions upon the point, what are fixed engines? They to some extent bear out the distinction drawn in the Act of

(1) Effect of the decisions on the question, what is a fixed engine?

Henry VI. (*n*), that, if the instrument is worked without the continuous presence of the person working it, it is a fixed engine: and this in most cases would be the test to apply. A net, however, may be a fixed engine, even if the person working it is continually present, if any mechanical means are adopted for making it stationary. The result would seem to be, that no net with which a fisherman is continuously present while it is fishing, and which he fishes, without any mechanical assistance to make it stationary, is a fixed engine so far as has been at present decided.

(2) What is an ancient right or mode of fishing lawfully exercised on the 6th August, 1861?

The second question, what is an ancient right or mode of fishing lawfully exercised at the time of the passing of the Salmon Fishery Act, 1861, or in one of the four preceding years? is one of great difficulty. It is far easier to say what is not than what is. It would seem, from a dictum of Mr. Justice Blackburn, that twenty years would certainly not lead to the inference that a mode of fishing was an ancient right (*o*).

Ravestorne v. Buckhouse.

The case of *Rawstorne v. Backhouse* (*p*) lays down the rule, that if engines have been used for many years in one place, and have been moved thirty-four years before the trial as to their legality took place, but have been fished continuously in the spot to which they were moved since that date, the question as to whether this is an ancient right or mode of fishing is a mixed one of law and fact,

(*n*) Hen. VI. c. 15.

(*o*) See *Holford v. George*, L. R., 3 Q. B., at p. 647.

(*p*) L. R., 3 C. P. 67.

and as matter of law it is not conclusive that such fixed engines are legal. In that case Robert Rawstorne claimed four baulk or stake nets in the estuary of the River Ribble between high and low water mark as fixed engines lawfully in use at the time of passing the Salmon Fishery Act, 1861, or in one of the four preceding years. In support of his claim, at the hearing before the Special Commissioners for English Fisheries, it was proved that Richard II., by a charter in the seventh and eighth years of his reign, containing an *inspeximus* of a grant made by Helias de Hoton to the Abbey of Cockersand, in the township of Hutton, with all liberties, &c., in moors and marshes, fisheries and fishings in rivaries and pools, &c. (in *piscaries et piscationibus, in rivaries et stagnis*), that by a charter of 37 Henry VIII., in consideration of 500*l.*, the king granted to Lawrence Rawstorne, (the predecessor in title of the claimant,) all our lordship or manor of Hutton, with all rights, &c. heretofore belonging to and part of the possession of our Monastery of Cockersand, and also all moors, marshes, fishings, waters and fisheries. By an indenture dated the 11th March, 1757, between Lawrence Rawstorne on the one part, and Sir Henry Hoghton, lord of the manor of Lea, the owner of the opposite shore of the Ribble, of the other part, reciting that each was seised of a fishery on the Ribble up to mid stream, and that disputes touching the manner of fishing had occurred between their tenants, and in order to establish the ancient just and rightful manner of fishing, they

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Backhouse.*

*Rawstorne v.
Buckhouse.*

thereby covenanted and agreed to fish in manner following,—by setting baulks, stakes and piles overcross the said river, to continue or to be removed from time to time to other places during the fishing season, or as long thereof as the party setting the same shall think proper, and to faster nets thereto, and by that or any other lawful ways or means to fish alternatively overcross the whole river, as well on their own side as on the contrary side of the same river, the owner or occupier on one side having one day's fishing. The claimant also produced an inquisition of the court-baron of the manor of Hutton, dated the 13th of April, 1787, which described the boundaries of the manor as extending to the mid-stream of the Ribble, and including the site of the said baulks. At the end of the inquisition was the following sentence:—“And we the jurors aforesaid do further find that the said Lawrence Rawstorne, in right of the said manor and estates, hath an exclusive several fishery to the mid-stream of the River Ribble, beginning at the line from the said cross or Morestone across the said river to the great stone in Rimshaw Headland, and ending at the line from St. Catherine's Well to the third butt or furrow in Cook Hey, alias Blackledge Bank, where a stone is placed.”

There were divers mesne conveyances, and finally a will dated 1850, devising the said manor to the appellant, the present lord of the manor.

There was no specific mention, otherwise than as above stated, in the charters or in the inquisition of the court-baron of stake nets or other fixed

engines as being used in the said fishery; and the only mention of stake nets or baulks in the documents of title was in the above indenture of 1757. *Rawdorne v. Buckhouse.*

At the present day, fishing with stake nets or baulks is not practised on Sir Henry Hoghton's side of the river, the lands over which his fishery extended having been for several years past reclaimed and converted into agricultural land. It was proved that the sites of the claimant's stake nets were within the limits of the manor, as described in the inquisition of 1787, and the boundary of the manor along the Ribble was about three miles.

At the locus in quo the Ribble is a navigable tidal river, and the channel, which previously to 1844 had been tortuous and winding had since been straightened, and confined within parallel sea walls, about 1,000 yards apart; and at high tide the water, previously to 1861 (taking into account the land on both sides), covered a space varying from about a mile and-a-half wide at the eastern or upper end to nearly two miles and a quarter wide at the western or lower end; but such space at the last-mentioned end had been about six years before contracted by embankments to the width of about one mile and three quarters only.

The steward of the estates produced rental books which contained entries of rents received from tenants from 1803 to 1854. Each year there was an entry of the tenant's name connected with the fishery, thus,—“1803, James Singleton,

*R. v. Rector v.
Backhouse.*

the fishery, 10*l*." In 1854 the fishery was let for 6*l*. The rent had fluctuated very much between 1803 and 1854, being mostly about 10*l*.; the highest rent being 40*l*., in 1841. Since 1854 the appellant has kept the fishery in his own hands, and has fished it in the manner hereinafter described.

It was proved by the oldest witnesses, one of whom deposed to a personal knowledge of sixty years, that three baulks only were used; but latterly there had been four, and in 1861 there had been four baulks used. Three of these were situated close to the river wall, being nearly at right angles to the current, each baulk being somewhat of a crescent form; and one end of the baulk was close to the river wall. The first baulk, or west baulk, was 220 yards long. The second, or middle baulk, was 400 yards long, and about 500 yards distant from the first baulk. The third, or higher middle baulk, was generally about a mile and two-thirds from the second baulk, and it was 350 yards long. The fourth baulk was generally about three quarters of a mile from the third baulk, and was seventy-five yards long.

*Mode of using
baulks.*

The mode in which the baulks or nets were set was proved to be as follows:—In a direction nearly at right angles to the direction of the current, but in a crescent shape, stakes each six feet long were driven or worked into the sand. A baulk consists of a series of separate nets, each thirty yards long and six feet deep, joined together with stakes. The distance from stake to stake is twelve feet.

Each baulk was set across a hollow in the sand. *Ramsborne v. Backhouse.*
The net was fastened to the upper part of the stakes, and the lower part of the net being free, so that, while the tide came out, the bottom of the net floated out on the top till it gradually rose with the tide to a horizontal position, and was no obstruction to the fish; but, when the tide receded, there was a readying stake which was attached to the net at every interval of twelve feet, and this readying stake kept the net erect. The readying stake being five feet long, while the net was six feet deep; the net, when kept erect, formed a kind of bag, and received the fish as they were returning with the ebbing tide. The fish are only caught on the ebb tide. The nets and stakes help to support each other. During spring or neap-tides there were generally four or five feet of water above the top of the stakes.

Witnesses were called, one of whom was aged seventy-four, who recollected these fisheries sixty years ago, and there were nets then and since used at the hollows in the sand just as they were used now. Old men deceased had also told these witnesses that in their time the nets were used in the same way. Before the river walls were straightened in 1844, by virtue of the Ribble Navigation Acts, there were several of these hollows, and nets were placed in some of them; but no nets were ever seen by the oldest witness, aged seventy-four, to be placed in any hollow nearer than 200 or 300 yards from the main channel, and they were generally half a mile distant: while

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a younger witness, aged fifty-six, said he had never seen them nearer than 100 yards from the main channel.

After the river walls were built, which stand in some places about three feet above the level of the sands, new hollows were formed close behind the river wall by the action of the tide on the wall; and the nets had been since that time always placed in these hollows, because they caught more fish.

One end of the net was on a few occasions fixed upon the top or side of the river wall; but the appellant did not claim to use the wall for this purpose, but merely claimed to put one end of the net as close to the river wall as might be necessary for fishing the hollows behind it. There were other hollows, but at a considerable distance from the walls, and smaller in size. About fifty years ago, this channel for about half a mile ran almost close to the land on the Hutton side, and so continued for a year or two; and during that time no baulks were placed on that part of the fishery; but when the channel retired further back and left wide sands, the baulks were put down again.

The Ribble Navigation Acts, authorized the straightening of the navigable channel and the building of the river walls in 1844; and one of these acts, the 16 & 17 Vict. c. clxx, s. 154, saves the rights of all lords of manors, but otherwise the acts are silent as to the fisheries in question.

On the part of the respondent it was contended

that the user of the baulks had not been consistent or certain ; and that there was, upon the whole, no evidence that the baulks were more than sixty years old, and therefore they must be illegal.

*Rawstorne v.
Backhouse.*

On the other hand, the claimant, the now appellant, contended that the charter of Richard II., coupled with the modern user, constituted evidence from which the commissioners were bound to presume that the baulks were privileged fixed engines ; that there was, apart from any of the documents produced, abundant evidence (which was uncontradicted) of the immemorial user of such baulks to entitle the appellant to a certificate under 28 & 29 Vict. c. 121, s. 41, and that in 1861 and previously the owner could have placed the baulks in those hollows in the sands out of the main channel which were most favourable to fishing within the limits of his manor, and that he was equally entitled to place them close to the river wall which had been made in 1844, and that such new sites were substantially the same as the previous sites ; that on these grounds the commissioners were bound to find these baulks, which were legal in 1861, to be privileged now ; and that, as to their sites, it was sufficient compliance with the 41st section of the Act of 1865, 28 & 29 Vict. c. 121, to describe them as situate on the south shore of the river Ribble, within the manor of Hutton, without further particularizing the exact spots.

The commissioners found as facts that the baulks claimed were situate on the sands within the manor of Hutton ; that, before 1844, they had never been placed in any hollow nearer the main channel of

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Backhouse.*

the river than one hundred yards; that there was, on the other hand, no evidence that there were any hollows worth fishing within that distance; that the removing the baulks close to the river walls in 1844 was an enhancement (a) of the engines; and that there had been no user of the baulks since the year 1844 on the sites on which they had been always placed before 1844.

The commissioners held that the baulks claimed came within the description of kiddles prohibited by Magna Charta and the statutes 25 Edw. 3, stat. 4, c. 4, and 45 Edw. 3, c. 2; and that as Magna Charta prohibited not only a several fishery being created in tidal rivers, but also prohibited kiddles being used or enhanced in fisheries, it was necessary for the appellant to produce evidence either of a grant of the crown prior to Magna Charta, or evidence from which they might reasonably presume such a grant, not merely of a several fishery but of the right to use fixed engines, such as baulks in such fishery; that the charter of Richard II., even if some evidence of a several fishery appurtenant to Hutton Manor, did not convey more than the usual words of form used in all conveyances, and did not import that any fixed engines were then used or authorized; that the indenture of 1754 was a private arrangement between two neighbouring owners, and was not binding on nor could be used to prejudice the

(a) As to the meaning of the word "enhancement," see *Williams v. Wilcox*, 8 A. & E. 314, where it is said enhancement means merely setting up.

public, and moreover no proof was given that such agreement as to alternate fishings was ever acted upon; that the inquisition of the court baron omitted all mention of baulks which, if they then existed, it was natural to expect would be specified in such a document; that the earliest evidence of the existence of baulks was in 1806. From the whole of the evidence the commissioners drew the conclusion that, although they might reasonably presume that the lords of Hutton enjoyed a several fishery created before Magna Charta, extending to the mid-stream of the river, no grant to use baulks was ever made by the crown prior to Magna Charta and to the ancient statutes preceding and including that of 2 Hen. 6, c. 15; and they declared that all stake-nets in the manor of Hutton were illegal, and they made their order that they should be abated and removed. They further held that the baulks were illegal, inasmuch as since the year 1844, when the river walls had been built, the baulks had been enhanced by their site being changed to a position close to such walls, which was altogether a different site relating to the navigable channel of the river from that to which the previous user confined them, and thus there was no user in the years 1857 to 1861 of the baulks on the sites where alone they were legal.

Against this decision the claimant Rawstorne appealed; and the questions of law for the court were,—first, whether on the evidence and facts as found the commissioners were bound as matter of law to presume and to find that the baulks were privileged fixed engines within the meaning of the

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Backhouse.*

*Rossetorne v.
Backhouse.*

Salmon Fishery Acts, 24 & 25 Vict. c. 109, s. 11, and 28 & 29 Vict. c. 121, s. 35. If the court should be of opinion in the affirmative, then, secondly, whether their certificate ought to describe the site of the baulks to be on the south shore of the River Ribble on the lands in the manor of Hutton, without further defining the exact spots.

In delivering the considered judgment of the court, the Lord Chief Justice Bovill said: "The material question stated upon the special case for the judgment of this court was, whether, on the evidence and facts as found, the commissioners were bound, as matter of law, to presume and to find that the baulks were privileged fixed engines within the meaning of the Salmon Fishery Acts.

"From the form in which the question is submitted to us, it is not necessary to enter into a minute examination of the details of the evidence adduced before the commissioners. There was, no doubt, evidence well deserving their consideration: and if during all living memory the enjoyment of the right claimed had been uniform and unvarying, and consistent also with the ancient documents of title, we think the commissioners would have been bound to refer it to a legal origin, as by grant, charter, or immemorial usage, if possible, and to have presumed that the three baulks in question were legal and privileged engines within the meaning of the Salmon Fishery Acts.

"The difference in the situation of the baulks since 1844, however, at once introduces a difficulty

in the way of the appellant, which is of the more importance in these cases, because, by the 41st section of the Act of 1865, the commissioners are bound to fix the situation, size and description of the engines which they are to certify as privileged. The use of the engines in the particular situations where they have existed of late years certainly could not be carried back earlier than the year 1844; and this, under the circumstances, would not be sufficient to found the presumption of a right to have them at those particular places: and, if the right to have them in the situations where they had existed previously to 1844 was relied upon, the appellant was met by the fact that they had not been so used in those places during the open season of either of the five years 1857 to 1861, as required by the Act of 1865. In order to avoid these difficulties, the appellant's counsel was driven to contend that the appellant had proved a right to have reasonable engines in reasonable places with reference to the changing of the bed of the river, and that the commissioners were bound to make a presumption, and to find accordingly in favour of such a right.

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"The utmost extent, however, to which that argument could, in our opinion, prevail, would be that the commissioners might be at liberty to presume such a right in the terms in which it was contended for by the appellant. From the very nature of the evidence in other respects, depending upon the vague and general language of the more ancient documents, the deed of arrangement of

*Randome v.
Backhouse.*

1757, the making and the effect of the artificial new embankment in 1844 (which might prevent the enjoyment of ancient rights without creating any new privileges), and from considerations arising from the ownership of the soil itself, and a several fishery in half the river, and the changes in the course of the river, taken in connection with the mode and places of using the baulks, and the varying situations and number of them, and which necessarily involved the question of whether there had been any enhancement of the baulks, we think the case was one essentially for the consideration and determination of the commissioners as a mixed question of fact and law, and not one where they were bound as matter of law to make the presumption in favour of the appellant: and certainly not in the terms for which he contends, viz., to have reasonable engines in reasonable places.

“ We need only add that the commissioners in these cases are bound to see that the right to privileged engines is satisfactorily made out by the party who claims to use them; and we do not wish to throw any doubt upon the correctness of the conclusion at which they have arrived in this instance, though this is not the question submitted for our judgment.

“ Our judgment is, therefore, in favour of the respondent.”

*Holford v.
George.*

In *Holford v. George* (a), which was an appeal

(a) L. R., 3 Q. B. 639.

from a decision of the special commissioners of English fisheries disallowing a claim made by the appellant to 350 putchers at Hope Pill, three stop nets at Hope Pill and 130 putchers at Hock Crib, situate between high and low water mark on the River Severn, within the manor of Arlingham, as being privileged fixed engines within the meaning of the Salmon Fishery Act, 1865.

*Holford v.
George.*

The manor of Arlingham is within and once formed part of the great barony of Berkeley, granted by a charter of King Henry II. to Maurice of Berkeley, and it was admitted that several ranks of putchers or stop nets had been proved before the commissioners to have been legally used from time immemorial at certain places within the great manor of Berkeley.

In proof of the legality of the putchers and stop nets claimed by the appellant, he gave in evidence a feoffment dated the 20th of November, 1610, by which the then owner of the great manor of Berkeley conveyed the manor of Arlingham (which, as hereinbefore stated, had been part of the manor of Berkeley) to Thomas Yate, through whom the title had passed to the appellant by mesne conveyances. The feoffment in the parcels described the lands as "All that manor of Arlingham, with its appurtenances, and all that free fishing in the River Severn, over, against, and so far as the manor, parish, or village of Arlingham extends, and also all those the liberties and franchises of free fishing, &c."

There was no more specific description in such

*Holford v.
George.*

conveyance of a fishery in the Severn as appurtenant to the manor of Arlingham, within which manor the sites of the fixed engines were.

There was no specific mention in any of the documents of title of putchers or stop nets, or other fixed engines in connection with such fishery.

At the place where the manor of Arlingham abuts on the left bank of the Severn the river is a navigable tidal river or estuary, and is about half a mile wide between high water mark on either side. It was admitted that the manor of Arlingham was bounded on one side by the medium filum aquæ of the Severn.

As to the putchers and stop nets at Hope Pill (which is higher up the river than Hock Crib), it had also been proved by a witness, who was sixty years old,—who had been lessee of the lord of the manor of the fishing here, and whose father had been lessee from the year 1825 till he himself became a lessee,—that he remembered the fishery since he was ten years old, that is to say, for forty-five years prior to 1861; that putchers and stop nets were used at Hope Pill on the same sites as at present during the whole of that time, and were there in use when he first knew or could recollect the fishery; and that when he was ten years old one Cooke was tenant of the fishery: but whether Cooke used such putchers before that date, no evidence was given. With respect to putchers at Hock Crib, a witness, who was fifty-seven years old, said that twenty-five years ago he was, for the first time, employed at and knew the

fishery there, that there were old stakes then on the same site, which he filled up with putchers. *Holford v. George.*

The witnesses stated that in 1861 the number of putchers used was,—at Hope Pill 350, at Hock Crib 100, and three stop-nets at Hope Pill.

It was proved that the mode in which putchers were used was as follows:—On the shore, between high and low water mark, double rows of stakes, each stake being about twelve feet long and eight inches thick, are driven into holes cut in the rock a depth of from one to two feet, and the rows are in a direction at right angles to the current. By means of cross-poles fastened to these upright stakes, partitions are made of sufficient size and depth to contain the putchers, which are laid horizontally, and all touching each other, each putcher being kept fixed in its position by means of the stakes and cross-poles. A putcher is a conical or funnel-shaped basket, made of twenty straight rods fastened together at intervals by four or five hoops of decreasing size, each rod about half an inch or an inch thick, and about five feet long, and running lengthways from end to end of the basket. The length or depth of the basket is about five feet, the diameter about twenty inches at the mouth (where one end of each rod is fastened to the largest hoop at intervals of three inches) and two or three inches at the other end. The framework is loose or open, and the mouth and end are open so as to offer as little resistance to the tide as possible. These putchers, when put in position, lie on their side in tiers three or four

Mode of using putchers.

*Holford v.
George.*

deep, and to one who stands in front of them they appear like a honeycomb, the mouths all facing one way, either facing the flood tide or the ebb tide; a rank of putchers means a row consisting of several tiers, the length of the rank varying with the number of the putchers used, and the whole of the stakes and putchers together forming a structure sufficiently stable to resist the action of the tide. A salmon is caught by going into one of the putchers with some force, when its head becomes wedged in the small end of the putcher, and it is kept there fixed till the ebb of the tide allows the fisherman to go and take the fish out. These putchers are fixed annually during such portion of the year as they may be lawfully used to catch salmon, the stakes remaining permanently. Putchers are only calculated to catch large fish, and not eels, shrimps or the fry of fish.

Mode of
using stop
nets.

It was proved that the mode in which the stop nets were used was as follows:—A stake is driven into the shore near high water mark, and a rope attached to it which is run out towards the bed of the estuary nearly at right angles to the line of the shore, and the further end of the rope is fixed by an anchor in the soil of the bed of the river. The boats are each attached to this rope, which is used to steady them. The number of boats which may be used on one rope depends on the length of the rope. When the boat is thus steadied by the rope a net is used in combination with each boat in the following way:—The net is so placed that the body of it lies across and under the boat, the

mouth of the net, which is about fifteen feet wide, facing the tide on one side of the boat, and the tail or end of the net stretching under and beyond the other side of the boat. By a combination of poles the mouth of the net is kept a few feet under the surface of the water, and the fisherman holding a string attached to the tail of the net in his hand feels when a fish enters the net, and immediately jerks the mouth of the net up and out of the water to prevent the escape of the fish, and which he then takes out. *Holford v. Geary.*

At the hearing it was contended on the part of the appellant,—First: That under the above circumstances he had proved, and the commissioners ought to hold, that the putchers and stop nets were privileged under 24 & 25 Vict. c. 109, s. 11, which provides that the section shall not affect any ancient right or mode of fishing exercised at the time of the passing of the act, by virtue of any grant or charter or immemorial usage, and that the commissioners ought to certify to that effect. Secondly: That the commissioners were at liberty and ought to presume, and a judge would and ought to have told a jury to find, that there was a right to use putchers and stop nets generally within the great manor of Berkeley, and the manor of Arlingham as part thereof, and that it was not necessary that they should have been always at the particular spots where now used. And thirdly: That even if this were not so, the commissioners were at liberty and ought to hold, and a judge would and ought to have told a jury

*Holford v.
George.*

to find, that there was a right to use them at the particular spots, either by grant or charter or immemorial usage. On the other hand, it was contended on the part of the respondent that there was no sufficient evidence of the legality of the putchers and stop nets; that only forty-five years' user prior to 1861 had been proved as to some, and twenty years' user prior to 1861 as to the rest; that in the statute 1 Eliz. c. 17, and 18 Geo. 3, c. 33, putchers were not mentioned as then existing, and the reasonable inference was that they had begun to be first used in very recent times, and were illegal.

The commissioners found, as facts, that the putchers and stop nets claimed at Hope Pill, had been continuously used since 1816 at the places in question; that the putchers at Hock Crib had been continuously used there since 1841. But there was no evidence, one way or the other, as to any prior user respectively.

The commissioners were of opinion that, inasmuch as Magna Charta had prohibited a several fishery being created since that date, and also Magna Charta and subsequent statutes (Magna Charta, 9 Hen. 3, c. 23; 25 Edw. 3, stat. 4, c. 4; 45 Edw. 3, c. 2; 1 Hen. 4, c. 11; 12 Edw. 4, c. 7) repeatedly prohibited weirs or kiddles being made or enhanced in navigable rivers, the only ground on which the fixed engines called putchers could be legal was on the presumption that the crown had granted before Magna Charta the right to use such fixed engines. That, in like

manner, the use of fixed nets involved a several fishery at the place where they were used; that such several fishery could only have been legally created before Magna Charta, and that the fixed nets themselves had been expressly prohibited by the statute 2 Hen. 6, c. 15, and no fixed net could be legal which had not been lawfully used before the date of the statute last mentioned. The commissioners found that, though there was evidence from which they might reasonably presume that a several fishery had been legally created before Magna Charta, still, as no grant was produced, they could only infer from the subsequent user what the terms of that grant were. That taking the documentary evidence of a general grant of several fishery, with the proved use of putchers and stop nets at Hope Pill for only forty-five years previous to 1861, and a proved use of putchers for only twenty years previous to 1861 at Hock Crib, they could not reasonably presume that a grant of the crown to use putchers at the places in question existed, nor that they were lawfully used before the statute 2 Hen. 6, c. 15. They were further of opinion that the statute 24 & 25 Vict. c. 109, s. 11, did not create any new right, but merely saved such rights as were legal before that date. Therefore, they found that the putchers as well as the three stop nets claimed were illegal, and ordered them to be abated and removed.

*Holford v.
George.*

The question for the opinion of the court was, whether on the evidence the commissioners ought

*Hoford v.
George.*

to have presumed and found that the putchers and stop-nets, or any of them were lawfully used in 1861, by virtue of any grant or charter or immemorial usage.

In delivering judgment the Lord Chief Justice Cockburn said: "I am of opinion that our judgment should be for the respondent. The commissioners have found that the 350 putchers and the three stop nets had been in use for forty-five years before the passing of the 24 & 25 Vict. c. 109, and the 130 putchers for twenty years. The statute requires, in order to legalize the use of putchers, that they should have existed from time immemorial, and the commissioners have decided upon the evidence of user that they were not warranted in coming to the conclusion that this right had been in existence from that time. I concur in thinking that they could not have found otherwise with reference to the putchers, as to which an enjoyment of twenty years only had been proved. But with regard to those putchers as to which there had been an enjoyment for forty-five years, the question is one of fact. The commissioners had the evidence before them, and it was competent to them to find either one way or the other. Our attention was called to the other circumstances in the case, and I think they are not at all unworthy of attention, and might have carried more weight with the commissioners, seeing that this was undoubtedly a several fishery, and that it was a several fishery appurtenant to a manor which had formed part of the great manor of Berkeley, and in other places which had belonged to that great

lordship similar rights to these existed, and were found to have existed from time immemorial. If a jury, taking these circumstances into consideration, had found that this mode of fishing had existed from time immemorial, and application had been made to us for a new trial, I should not have been disposed to disturb the verdict. On the other hand, if the jury had arrived at the opposite conclusion, and if we had been applied to, we should have said it was perfectly competent to them to find one way or the other. What I understand the commissioners to refer to us is, not the propriety of their finding or of their conclusion as to the facts, but whether, on proof of a user of forty-five years, they were bound by a conclusive presumption of law to say, that because there was no evidence to negative an origin before the time of legal memory the right must have existed before that period. I cannot say that I think they were so bound, but it was perfectly free to them to arrive at the conclusion which they have adopted. I think, as a matter of law, we cannot say that the commissioners are wrong, or that their decision should be set aside. For the same reason the stop nets cannot be assumed to have existed from time immemorial, and with regard to them it seems to me that these nets are, from the manner in which they are used, within the mischief aimed at by the 2 Hen. 6, c. 15, and therefore that they could not be lawfully used so as to fall within the proviso of the 24 & 25 Vict. c. 109, s. 11.

*Holford v.
Geary.*

*Holford v.
George.*

“ The first part of the statute of 2 Hen. 6, c. 15, speaks only of nets fastened and hanged continuously day and night; and afterwards, in the second part, it prohibits nets fastened, &c. ‘ continuously to stand as afore is said;’ so that, in the second part, it would appear that, to be within the statute, the nets must be fastened by day and night. But I think the proviso shows the meaning of the legislature. It was meant that no nets should be permanently attached to posts, boats and anchors, and that only those nets might be used which could be drawn and pulled by hand, and which did not interfere with the navigation of a river and did not destroy the fry of fish. It is admitted by the appellant that for not less than three hours at a time this obstruction is continuous, and effectually bars the navigation, and also obstructs the passage of the fish; while, according to the respondent’s view, the stop nets are used some six or seven hours from half-flood to the half-ebb. Although the obstruction to the navigation is not continuous in the sense of its lasting by day and by night, yet it is of a serious character, and for all practical purposes is almost or even quite as mischievous as though it existed without any interval of cessation. I think the stop nets within the mischief of the statute, and, unless they existed before the time of 2 Henry 6, c. 15, was passed, they do not come within the protecting provision of the Salmon Fishery Act. I think, therefore, that these stop nets are illegal, and that the commissioners were right in the view they have taken.”

Mr. Justice Blackburn said: "I am of the same opinion. The first question is as to the claim to use the putchers, which the commissioners held could not be legal unless they have been used from and before the time of Magna Charta. And I think the commissioners were right. On the second question the commissioners decided that the stop nets were not used before the time of Henry VI., and, therefore, were illegal. Both questions turned upon the point whether or not the putchers and stop nets had been used at a time far more remote than that as to which evidence was produced. I agree that a great deal of evidence was brought forward with a view to establish the claim to use the putchers and the stop nets. It is proved that the manor of Arlingham was part of the great manor of Berkeley, and that in 1610 a conveyance had been made of the manor of Arlingham, expressly mentioning 'all that free fishing and several fishing in the River Severn;' and it was proved that other putchers and stop nets had been legally used from time immemorial at certain places within the manor of Berkeley. No doubt this is evidence to show that in those other places there were several fisheries, and it is now not improper that putchers and stop nets should be used in them. These matters have some bearing as to the legality of the claim to use the putchers and stop nets in question; but the evidence which they afford is slight; and, if there had been no evidence of any user of these putchers and stop nets in question before the year 1861, I should think that the com-

*oford v.
George.*

*Hillford v.
George.*

missioners would have been bound to find them illegal; but there is evidence beyond that time, and, in the one instance, the evidence shows that the putchers had been used twenty years before 1861; and, in the other instance, that the putchers and the stop nets had been used for forty-five years. In the former instance the evidence is very weak; if it had gone back as far as living memory, it might have been sufficient; but so short a period as twenty years, unless there was some good reason why the appellant could not adduce evidence as to any preceding time, would not be enough. The instance of user for forty-five years was much stronger. The commissioners might have found that the putchers had been used during a longer time, but they were not bound to do so, and many circumstances might induce them not to come to such a conclusion. They have found as a fact that the putchers have been used for a period of forty-five years, but they have not found they were used from time immemorial; that makes a great difference in my view of the legality of the claim. The commissioners might very well have drawn the inference in favour of the appellant, though, as my lord has said, in no sense were they bound to do so. But the commissioners have not found an immemorial usage, and it is unnecessary to consider what our decision would be if they had.

“I now pass to the question whether stop nets are forbidden by the 2 Hen. 6, c. 15. It is not disputed that the stop nets were stationary, and it

is necessary to decide whether they were lawfully used in 1861. It is a difficult point, and depends upon the meaning of 2 Hen. 6, c. 15. The first part appears to be aimed at nets which were fastened and hanged continually, day and night, by a certain time in the year; and the second part forbids that they be set or fastened 'continually to stand as aforesaid.' I do not think that these nets can be said to be permanently fixed, but I do not think that the statute forbids merely nets fixed during the whole of the twenty-four hours of the day. Although not stated in the case, I understand that the boats and nets in 1861 were not continually fixed at one spot, but were placed there from half-flood to half-ebb; but, for all practical purposes, the passage of the fish and the navigation of the river are obstructed during the time the tide is up; and the question whether these nets were continually fixed seems to depend on whether they were set during all that portion of the day at which alone it was practicable for the fish to pass, and the navigation to be carried on. If this be so, it is a question of fact for the commissioners, and in my opinion they were right in saying that the stop nets came within the mischief at which the 2 Hen. 6, c. 15, was aimed at, and consequently could not be legal. If the nets had been used before that statute, the result would have been exactly the same as if they had been used before the time of Magna Charta. I think the commissioners might have found that they did lawfully exist before that statute, but I certainly cannot say that they were bound to do so."

*Holford v.
Gourye.*

*Holford v.
George.*

Mr. Justice Mellor said: "I am also of opinion that our judgment must be for the respondent. It appears to me that on the view which the commissioners took of the evidence they were perfectly warranted in not finding that there was an immemorial mode of fishing. The object of appointing the commissioners is that they shall investigate, and, therefore, unless they find that there is a title or grant, charter, or immemorial usage, it is their duty to declare every mode of fishing with a fixed engine illegal. But when a right of fishing is claimed by virtue of a grant, charter, or immemorial usage, it is a matter of discretion for the commissioners whether they ought to be satisfied that it has been legally enjoyed. In cases of this description there may be a great body of evidence of user; but if it be confined only to a period of forty-five or twenty years, the commissioners have a right to ask themselves whether or not they have had brought before them such evidence as is necessary to support a claim of immemorial usage, and they are not bound by evidence of user for forty-five or twenty years. If from the nature of the case the commissioners might reasonably expect that other evidence might have been forthcoming, and which they believed had been kept back, I think the commissioners were right in deciding against the claim.

"I concur with my lord as to the construction of the 2 Hen. 6, c. 15. I think the expression 'continually' means not permanently or continuously. My opinion is strengthened by the

words in the proviso, 'drawing and pulling them by hand as other fishers do with other nets.' I think this shows that all nets not worked by hand are prohibited, and it is manifest that these nets are fixed for a considerable period of time." *Holford v. George.*

Mr. Justice Lush: "I am of the same opinion. The commissioners were not bound to find that these putchers and stop-nets were used from time immemorial, and as to those putchers which had existed for only twenty years, they would not have been justified in finding an immemorial usage in favour of them. This is not enough to determine the question as to the stop-nets, if they were not forbidden by the statute of 2 Hen. 6, c. 15. At first, I was inclined to think that the act forbade only those nets which were fastened and hanged continuously by day and night a certain time in the year, but on further consideration I feel satisfied that that statute was intended to forbid the use of any net not drawn by hand."

In the cases of *Waite v. George (q)* and *Cadogan v. George (q)*, which were also appeals from the decision of the special commissioners as to the use of putchers in the estuary of the river Severn, which is at the point where the putchers were used in a tidal navigable river; but the ground upon which the putchers were placed was proved to belong to the claimants and not to the crown. In the course of the argument, the court intimated, as their opinion, that if an uninterrupted user of sixty years could be proved, and that longer user could

*Waite v.
George.
Cadogan v.
George.*

(q) Not reported.

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not be disproved, the commissioners would, as matter of law, be bound to find that such engines were lawfully in use at the time of the passing of the Salmon Fishery Act, 1861, or in one of the four preceding years by virtue of immemorial user. However, the point was not decided, as, after the case was fully argued, the court remitted it to the special commissioners for further evidence, and they, upon taking some additional evidence, reversed their previous decision.

Meaning of
the exception
of an ancient
right or mode
of fishing.

As to the meaning of the exception that the section is not to apply to any ancient right or mode of fishing lawfully exercised at the time of passing the Salmon Fishery Act, 1861, the decisions as to what is the exact meaning of these words are not very clear. It is said that the exception was originally intended to exempt putts and putchers from the operation of the section; be that as it may, it would seem that the ancient right of fishing must be a right of an individual or corporation—it cannot be a public right.

*Bevins v.
Bird.*

It must not
be the right
of the public
as such.

This point was decided in *Bevins v. Bird* (q). There the appellant, a keeper of the Leven Fishery Association, on the 11th of July, 1864, visited what are called Cark Sands, being part of an estuary called the Bay of Morecambe, within the county of Lancaster, and is navigable for vessels when the tide is in, and found on that part of the sands over which tides flow and reflow every day stakes firmly driven into the sands two or three yards apart, about five feet out of the sands

with nets fixed on them ; spars were fixed to the nets. The nets rose and fell with the tide by means of tied spars, but the stakes remained fixed and the nets on them when the tide was out. The nets were taken up every tide. There was, upon the hearing, evidence of the respondent being the owner or one of the owners of the nets ; and, indeed, it was not disputed on the part of the respondent that he was the owner. The nets were found so placed as aforesaid, with salmon lying against the stakes on which the nets were fixed, and in the opinion of the justices were so fixed to the soil as to be fixed engines within the 11th section of 24 & 25 Vict. c. 109. The nets so found were taken off the stakes by the appellant and carried away, and while the appellant was engaged in carrying them away, the respondent, with his brother (against whom a similar information was laid) and others, came up to the appellant and said to him, " They are our nets thou's taking away ;" and respondent further said, that the appellant had no business to carry them away, and then took them from the appellant and carried them to his (respondent's) house ; that afterwards on the same day, with the assistance of a police constable, the appellant got the nets back from the respondent. On the part of the respondent it was contended that, in taking the nets from the appellant, he did it to assert his right to use the nets in the way in which they were found, *bonâ fide* believing that by long usage a right had been acquired so to use them.

*Bevis v.
Bird.*

*Berins v.
Bird.*

There was no evidence before the magistrate of any exclusive right of fishery there. Evidence, however, was given on the respondent's behalf, by his father, that nets of this kind, with a lawful size of mesh, and fixed in like manner, had for more than forty years past, up to the time of the committing of the alleged offence, been used by respondent's father, his family, and others of the public, in fishing on the Leven Sands or estuary for salmon, and the justices being satisfied that the evidence was sufficient evidence of this being an ancient right or mode of fishing lawfully exercised at the time of the passing of the said act, by virtue of immemorial usage, within the meaning of the said 11th section of the said statute, dismissed the information. Against this the complainant appealed, and the questions for the decision of the court were: (1) Whether the right or mode of fishing so claimed as aforesaid was such an ancient right or mode of fishing as is exempted by the 11th section of the Salmon Fishery Act, 1861, from the operation of that section; and if so (2), Whether evidence to the effect above stated was sufficient evidence of immemorial usage to support such an exemption under the circumstances of the case.

The Court of Queen's Bench held that the claim was bad, and could not be sustained. The Lord Chief Justice Cockburn said: "The claim was made for the respondent's family and certain others of the public, *i. e.*, the general public, and the public can have no rights as against the public. Our judgment must be for the appellant, and the case must go back to the justices."

In *Olding v. Wild* (*r*) *Bevins v. Bird* (*s*) was considered a conclusive decision of the question as to whether the persons could claim to carry on the mode of fishing by a net fastened to a stake, in the way described above (*t*), as an ancient right or mode of fishing lawfully exercised at the time of passing the Salmon Fishery Act, 1861.

In *Watts v. Lucas* (*u*) the Queen's Bench held that the 11th section of the Salmon Fishery Act, 1861, only applies to fixed engines placed for the *prima facie* purpose of taking salmon, not to fixed engines placed for the purpose of taking other fish but which may accidentally take salmon. In that case the respondent was charged with using a fixed engine contrary to the 11th section of the Salmon Fishery Act, 1861; there was no evidence to prove that the net was used for taking salmon, and the respondent proved that *prima facie* it was used for taking mullet and other fish. The justices declined to convict him for using a fixed engine contrary to the 11th section of the Salmon Fishery Act, 1861, and on appeal the Court of Queen's Bench affirmed the decision of the justices. In delivering judgment Mr. Justice Lush said: "The net not being an instrument used peculiarly for catching salmon brings us back to sect. 11 of the Salmon Fishery Act, 1861, which enacts that no fixed engine of any description shall be placed or used for catching salmon. Clearly

Olding v. Wild.

Watts v. Lucas.
Fixed engines must be for taking salmon.

(*r*) 14 L. T., N. S. 402.

(*s*) 12 L. T., N. S. 806.

(*t*) See ante, p. 230.

(*u*) L. R., 6 Q. B. 226.

*Watts v.
Lucas.*

the offence under this section is not in using a fixed engine, but in using it for the purpose of catching salmon (t)."

Any one may
destroy an
illegal fixed
engine.

*Williams v.
Blackwall.*

The 11th section of the Salmon Fishery Act, 1861, provides that "any engine placed or used in contravention of that section may be taken possession of or destroyed." In *Williams v. Blackwall* (u) the plaintiff sued the defendant for seizing, cutting to pieces and destroying the plaintiff's fishing nets and poles and converting the same to his use, and wrongfully depriving the plaintiff of the use of them.

The defendant, among other pleas, pleaded that the nets were illegal fixed engines placed in contravention of the provisions of the Salmon Fishery Act, 1861, and that he acted under the order and direction of one Edward Sharp, a conservator of the River Conway for the county of Denbigh, where the nets had been fixed. The plaintiff replied that the place where the nets were fixed was out of the county of Denbigh and of the jurisdiction of Sharp as a conservator. To this the defendant demurred.

On the demurrer being argued Mr. Baron Martin said, "Has not everyone a right to do what the defendant did? I see no reason why we should add after the word destroyed, 'by the conservator.' He might say that the conservator stood by and directed him to do it."

The Court of Exchequer, Pollock, C. B., Mar-

(t) L. R., 6 Q. B. 226.

(u) 8 L. T., N. S. 252; 7 N. R. 39; 9 Jur., N. S. 579; 32 L. J., 174, Ex.; 11 W. R. 621; 2 H. & C. 33.

tin and Bramwell, BB., unanimously gave judgment for the defendant.

From these cases the following may be deduced as the law as to fixed engines :—

Rules as to
fixed engines.

- (1) No fixed engine,—that is, no stake net, bag net, putt, putcher or stop net, no net made stationary in any way, no net that is left unattended during the time it is fishing,—may be used for catching or facilitating the catching of salmon, or deterring or obstructing the free passage of salmon, except it was in use in either of the years 1857, 1858, 1859, 1860 and 1861 (*x*);
- (2) If the legality of a fixed engine has been inquired into by the special commissioners of English fisheries, a certificate of its being a privileged fixed engine is conclusive evidence that the engine is a privileged fixed engine (*y*);
- (3) Copies of the certificates as to all privileged fixed engines are deposited with the clerk of the peace for the county in which the engine is situate (*z*);
- (4) If the engine has not been inquired into by the special commissioners, then, for the purpose of showing it to be legal, the following facts must be proved :—
 - (i.) That it was legally in use during

(*x*) 24 & 25 Vict. c. 109, s. 11; 28 & 29 Vict. c. 121, s. 39; 36 & 37 Vict. c. 71, s. 4.

(*y*) 28 & 29 Vict. c. 121, s. 41.

(*z*) Sect. 53.

one of the years 1857, 1858, 1859, 1860 and 1861 :

(ii.) That it was so used by virtue of grant, charter or immemorial usage.

As to what will be sufficient to prove this, it would seem that if positive user for sixty years can be shown, and no positive evidence can be given as to when the user began, the court will presume that the engine is legally used, but that the user must be that of an individual or a body of individuals, not that of the public.

Position of fixed engine may not be changed.

The certificates of the special commissioners as to privileged fixed engines set forth the situation, size and description of the engine ; no fixed engine can therefore be used of a different kind, of different size, or in a different situation from that named in the commissioners' certificate.

Boards of conservators may purchase fixed engines compulsorily.

Under the Salmon Fishery Act, 1873 (*a*), boards of conservators are empowered to purchase compulsorily any fixed engine they may deem it expedient to remove. The procedure on such purchase is the same as that upon the compulsory purchase of a weir which has been previously described (*b*).

SECT. 3.—*Fishing Weirs.*

What is a fishing weir.

A fishing weir was defined in the Act of 1861 to be a dam used for the exclusive purpose of catching or facilitating the catching of fish, and in regard to these structures the Salmon Fishery

(*a*) 36 & 37 Vict. c. 71, s. 49.

(*b*) See ante, Chap. VII., pp. 152—158.

Act, 1861 (*c*), contained some very stringent regulations. These weirs, the old kidelli, were prohibited from being set up in public rivers by the 23rd Chapter of Magna Charta (*d*), which says, "Omnes kidelli deponantur de cetero penitus per Tamisiam et Medweyam et per totam Angliam nisi per costeram maris;" kidelli being, as Lord Denman states, "open weirs erected for taking fish" (*e*). Notwithstanding this prohibition these weirs seem to have been frequently erected, as several statutes were passed against them. The Act of Edward III. (*f*) seems to have introduced a compromise in the matter, for it did two things:—(1) It legalized all existing fishing weirs in all rivers, navigable or otherwise; and (2) It prohibited the erection of all new weirs in navigable rivers. So that at the present day every fishing weir, if in a navigable river, must have existed before the time of Edward I. In non-navigable rivers no such restriction existed, and any fishing weir that has existed for upwards of twenty years before the passing of the Salmon Fishery Act, 1861, if it was used in that year, is legal. Since 1861 no new fishing weir can be made, the twelfth section of that act prohibiting the use of all fishing weirs that were not lawfully in use on the 6th August, 1861, by virtue of grant, charter, or immemorial usage, under a penalty of not exceeding

Prohibited by
Magna
Charta.

Stat. 25
Edward 3.

Fishing weir
in non-navigable
rivers.

(*c*) 24 & 25 Vict. c. 109, s. 23.

(*d*) 9 Hen. 3, c. 23.

(*e*) *Williams v. Wilcox*, 8 A. & E. 334.

(*f*) 25 Edw. 3, stat. 4, c. 4.

5*l.* for the first offence and 1*l.* for each salmon caught; not less than 2*l.* 10*s.* in the whole nor more than 5*l.* for the second offence and 1*l.* for each salmon caught; not less than 5*l.* in the whole for the third nor more than 5*l.* and 1*l.* for each salmon caught; and for a fourth offence not less than 5*l.* and 1*l.* for each salmon caught. On each conviction all traps, nets and contrivances and salmon caught are forfeited, and on a second and every subsequent conviction, if the offender is a licensee, his licence also.

If the fishing weir is legal it must be used in accordance with the rules laid down in the Salmon Fishery Act, 1861, for its use. Two questions, therefore, have to be considered. What is a fishing weir lawfully in use by virtue of grant, charter, and immemorial usage; and, What are the rules laid down in the Salmon Fishery Acts regulating the use of a legal fishing weir?

What is a
legal fishing
weir—

1. In navigable rivers.

Williams v.
Wilcox.

As to the first, what is a legal fishing weir, the question is concluded by authority. In a navigable river, as has been said, a fishing weir to be legal must have been in existence at the time of the accession of Edward I. This was decided in the case of *Williams v. Wilcox* (g). There an action of trespass was brought for throwing down a brushwood weir on the River Severn, which was at that place a public navigable river. The plaintiff proved the antiquity of the weir by extracts from Domesday; a chartulary of Hagh-

mon Abbey, containing a copy of grants of the fishery to the church and of the way to the fishery, the earliest being in the year 1172-3. He also produced a judgment of Michaelmas Term, 1 Hen. 6, in a cause wherein the abbot of Haghmon was indicted for obstructing the navigation of the Severn, and pleaded an immemorial right of taking fish in the weir, that the navigation was not obstructed, and that the weir was not made since 3 Edward I., all of which were found in his favour. At the trial at the Shrewsbury Assizes in 1836, Mr. Justice Williams left it to the jury to say, whether there had been an immemorial right from the crown of obstructing the navigation by the weir. The jury found for the plaintiff. On a motion for a rule for a new trial among other grounds for a misdirection, the court granted a rule; but on cause being shown, the rule was unanimously discharged, the court holding that a weir obstructing the whole or part of a navigable river is legal if granted by the crown before the commencement of the reign of Edward I.

*Williams v.
Wilcox.*

As to non-navigable rivers, it was generally considered that the same rule applied, that weirs to be legal must have existed before the time of Edward I. And this view was fortified by a dictum of Lord Ellenborough in *Weld v. Hornby* (*h*), not, however, necessary for the decision of the case. All doubt as to the law upon the subject has been removed by two recent cases, both appeals from the decisions of the Special Commissioners

2. Non-navigable rivers.

(*h*) 7 East, 195.

of English Fisheries, which have established the principle that in non-navigable rivers twenty, or at most forty, years' user before 1861 is sufficient to entitle the weir to fall within the exception as lawfully in use at the time of the passing of the Salmon Fishery Act, 1861. These cases were *Rolle v. Whyte* (h), and *Lord Leconfield v. Lord Lonsdale* (i).

*Rolle v.
Whyte.*

In *Rolle v. Whyte*, the appellant, Mr. Rolle, claimed to be entitled to use certain contrivances for the capture of salmon, describing them in his claim as a hatch-box, crib, or enclosed place in connection with a fishing mill-dam, situate in the River Taw, in the manor of Brightley, near Umlerleigh Bridge, in the parish of Chittlehampton, in the county of Devon; and contended that they were lawfully in use by virtue of a grant, charter or immemorial usage at the time of the passing of the Salmon Fishery Act, 1861 (24 & 25 Vict. c. 109).

At the place in question the River Taw is not navigable, but it begins to be navigable about three miles lower, and the appellant is the riparian owner on the right bank for about a mile, while Mr. Bassett is the riparian owner on the left or opposite bank, the lands of the appellant adjacent being part of the old manor of Brightley. On the left bank there is an ancient mill belonging to Bassett, and there is also a dam which is built across the river. The dam is built diagonally

(h) L. R., 8 Q. B. 286.

(i) L. R., 5 C. P. 667.

across the current to an island nearly in the middle of the river, and continued thence to another island nearer to the right bank. From the upper end of the last-mentioned island to the right bank a dam extends which, as the appellant contended, formed with the rest one continuous dam; while on the other hand, the respondent contended that the dam between the island and the right bank was not a continuation of or necessary part of the dam required for the purposes of the mill, but was a separate and distinct dam by itself.

*Rolle v.
Whyte.*

On the right bank the appellant has a side stream, or part of the main stream, which is about fifteen feet wide and 500 feet long, flowing round an island on his side, and in this side stream, or part of the main stream, the said salmon hutch or hutches are situated. On the other side of the island, viz., that side which is towards the mid-stream, one end of the mill-dam—according to the respondent's view—begins and extends to the opposite bank, though, as already stated, the appellant's view was that the mill-dam begins from the right bank. By means of this dam, the water is penned up and forms a long and angular-shaped pool, and is used to supply the mill on the opposite side, and also a fishing hutch, or trap, in connection with such dam, situated close to the mill-wheel. The legality of the dam thus described, which extends from the mill to the island, and of the salmon hutch on the left bank beside the mill, was not here in question. But the commissioners found as a fact that the water flowing between the

*Rolle v.
Whyte.*

island and the right bank of the river was not necessary to, and did not interfere with, the dam on the opposite side of the island, and that the upper part of the island was 300 yards higher up the river than the mill.

*Description
of a V weir.*

The apparatus for catching salmon used and claimed by the appellant was as follows. In that part of the dam which extends from the upper end of the island to the right bank of the river is placed a fender, or set of fenders, part of which is permanent and the other part moveable. The permanent part consists of a series of wooden bars, extending vertically from the top of the water to the bed of the river, and placed close enough to prevent the escape of any but small fish, but sufficiently far apart to allow the stream to pass freely through. The moveable part consists of water-tight shutters, which, when closed, completely dam up the water. At a point further down the side stream, or part of the river which is between the right bank and the island, a wooden apparatus is placed, extending quite across from the right bank of the river to the island. This apparatus is called the needles, being a framework of wooden spars or rails of a V shape, the apex of the V pointing up the stream, and leaving a narrow opening of about six inches, sufficient to let salmon pass up through such apex of the V or the eye of the needles. The salmon coming up the river are by their instinct induced to face the current, and in doing so they pass up through the needles. Having passed through the

needles on their way up stream, the salmon are prevented returning by the difficulty of finding the opening between the needles, and so remain enclosed in a trap or enclosure formed by the needles on the one hand, and the grating placed in the dam behind the fenders on the other hand. The moveable water-tight shutters being then closed, and the flow of water through the grating cut off, the water between the dam or fender and the needles runs or drains away, leaving that part of the bed of the river dry, or sufficiently shallow to enable the fish to be caught without difficulty.

*Rolle v.
Whyte.*

A little further down another set of fenders and needles is made, which operate in exactly the same way. These, which are called the lower fenders, were made by cutting through the island, so as to admit water from the bed of the main river into the same side stream or part of the main river, and the lower needles being situated about ten yards below the lower fenders. The salmon going up to the upper needles and fenders must first pass through the lower needles, there being in fact but one entrance towards both sets of fenders. The lower set of needles thus contribute, as well as the upper set, to facilitate the catching of salmon at the upper fenders, and are capable of being used in connection as well with the upper as with the lower fenders.

In proof of the legality of the salmon hutch or hutches, the appellant tendered the following documents of title:—

An indenture under seal, between the two

*Rolle v.
Whyte.*

then riparian owners on both sides, dated 1260, whereby the Lady of Umberleigh granted to the appellant's predecessor, the Lord of Brightleigh, a yearly rent of 2s. and liberty to grind his corn at her mill free, in return for her hutched weir at Umberleigh and the easements to be granted at such weir. And she agreed that all fish taken there in wheels, hutches, nets, or any other engines, be faithfully divided between them, and she covenanted to repair the hutches in the weir. A decree in Chancery, dated 1692, enforcing specific performance of the above agreement as regards the division of the fish. An agreement between the two opposite riparian owners of Umberleigh on the one hand, and the Countess of Bath, a riparian owner further down, on the other part, dated 1664, whereby she agreed, subject to qualifications, to remove certain razes or cattle fences put up across the bed of the river, which were complained of as preventing the fish going up to their part of the river at Umberleigh, and injuring their profit and ancient privileges there. A quadripartite deed, dated 1720, inter alia, demising the capital, messuages, and demesne lands of Brightleigh (*i.e.* lands adjacent to the appellant's part of the river), and also a several fishery in the River Taw, at a rent of 140l. A survey made in 1737, and contract by Samuel Rolle, the appellant's predecessor, to purchase the said lands, with the fishery in the River Taw. Several rack-rentals of Brightleigh, between 1747 and 1758, signed by Denys Rolle, mentioning "the

fishery" as then let at 6*l.* 16*s.* 6*d.* for a half-year's rent. Old accounts of salmon, signed and rendered in 1761, 1762, by the servants of Denys Rolle, stating the produce of such fish "taken in the hutch," and by draughting by certain servants named. An indenture, dated 1762, whereby Denys Rolle demised the lands adjacent, and the head weir and salmon hutch therein; and also the mill-leaf and fishery in the River Taw, and reserving "a right of way to and from the hutch and island near Gribble's Marsh." A lease by Lord Rolle, to one Parkin, of the fishery in the River Taw, dated 1803, containing a covenant "not to take backward salmon in the hutch." Subsequent leases which mention only "the fishery," without the word "hutch."

*Rolle v.
Whyte.*

It was proved and admitted that the appellant was the present owner of the lands adjoining the River Taw for about a mile, including the place in question to which the above deeds related. There was no evidence to show when the dam between the upper end of the island and the right bank, or when the fenders placed in it, or the upper set of needles were first erected or placed in the river, or whether the side stream or part of the river flowing between the right bank and the island was artificial or partly artificial. It was proved by aged witnesses who had lived near the spot that the hutches or apparatus in its present state, consisting of the dam, upper and lower fenders, and upper and lower set of needles, had been fished by the appellant and his predecessors

*Rolle v.
Whyte.*

for the last sixty years, including the year 1861; and it was also proved by two witnesses, aged eighty-six and seventy-six, that when they were boys there were only the upper set of fenders and needles, and that the lower fenders and needles had been added about seventy years ago and since these two witnesses recollected the place, and that the number of upper fenders or shutters was six, whereas now there are only three. On a view of the site of the upper fenders the state of the ground confirmed this account, and the mark of the place where some additional upper fenders stood is still visible. It was also proved that though the miller during living memory did not complain of the upper fenders being open, he often complained of the lower fenders being open, and when he found the water insufficient for his mill, he required the appellant's servant to shut them, which was always done on request, and failing the appellant's servant being near the dam, the miller himself went across the dam and shut those lower fenders, and was never interfered with by the appellant in so doing. At the hearing it was contended by the appellant that the whole of the apparatus in question in its present shape, or, at all events, the dam with the upper fenders, and both sets of needles were, under the circumstances, privileged and legal on the ground that there was evidence either of immemorial usage, or evidence from which the existence of a grant or charter might be presumed.

He also relied upon the Prescription Act, 2 & 3

Will. 4, c. 71. It was also contended by him Rolle v. Whyte. that the whole of his apparatus for fishing, with the dam composed of the islands and the artificial part of the dam extending across to the mill, constituted one fishing mill-dam, and that within the meaning of the Salmon Fishery Act, 1861, one fish pass only was required in such a dam. The appellant also contended that, inasmuch as a change having gradually occurred in the depth of that part of the river which is on the right side of the island, the water between the upper fenders and lower needles being shallower than it was formerly, he was entitled to add the lower set of needles as being necessary in connection with the upper fenders to the profitable use and working of the fishery, which could not be used or worked advantageously with the upper set of needles alone.

The appellant also contended that the water flowing between the right bank of the river and the island was not, in fact, a side-stream or separate river within the meaning of the Salmon Fishery Act, 1865, but that such water must be treated as part of the main river.

It was contended, on the other hand, by the respondent that this hutch, or the fenders in combination with the needles, constituted a fishing weir within the meaning of the Salmon Fishery Acts; and, if so, then, whether it was an ancient weir or not, it must, in conformity with the 24 & 25 Vict. c. 109, s. 27, have a gap of at least three feet wide always open, so as to give the fish a

*Rolle v.
Wheeler.*

chance of getting up the river, whereas at present the fenders and needles blocked up the entire side stream between the right bank and the island, and prevented any fish going up. That, moreover, as the evidence had established that the lower set of fenders and needles had been added for the first time during living memory, they were illegal, and ought to be removed.

On the 15th of December, 1866, the commissioners gave a written judgment. They found as facts that the two sets of fenders and needles had been used from the year 1800 or thereabouts, that is to say, more than sixty years before 1861; that the lower fenders and needles had been made and used for the first time about the year 1796, during living memory; that when the hutch was in operation, the needles and fenders barred the passage of fish throughout the whole side stream, or that part of the river flowing between the island and the right bank, and that the upper fenders were not in any way connected with, nor did they affect or interfere with, the mill-dam and the supply of water to the mill; that such mill-dam commenced only from that side of the island, and extended to the left bank of the river, and was altogether a distinct thing from the dam with the fenders and the needles used by the appellant. They further held, that the mode of fishing in the appellant's side stream, or part of the main stream, was by means of the fenders and needles, the fenders being used to dam up the water, so that when they were removed, and the currents flowed

through the grating, the fish were drawn up through the needles into a trap or inclosure, and that, therefore, the whole constituted together a fishing weir within the meaning of the Salmon Fishery Acts, the fenders and grating being the weir, and the needles part of the inclosure annexed to and part of such weir, and that the side stream, or part of the main river, for the purpose of fishing, was to be dealt with as a separate river.

*Rolle v.
Whyde.*

They held in point of law that the statute of 12 Edw. 4, c. 7, extended to non-navigable rivers which salmon frequent, and that that statute prohibited riparian owners, even in their private waters, doing any of the things there specified,—videlicet, making, levying, enhancing, straitening, or enlarging weirs, fish-garths, hecks, or flood-gates, and divers other disturbances. That this set of fenders and needles came within the description of things prohibited by the statute thenceforth. That the Prescription Act did not apply to rights which, during all the period of their user, had been prohibited by statute as illegal; that therefore in order to prove the legality of the fenders and needles, the appellant was bound to produce evidence from which they might reasonably conclude that these had existed and been used before the statute 12 Edw. 4, and if it could be shown that they were either made and used for the first time in whole or part since that date, they were in whole or in part illegal. That, taking the documentary evidence along with the modern user proved, they might reasonably infer,

*Rolle v.
Whyte.*

and did infer, that the appellant's predecessors had had a set of fenders and a hutch since the time of Edward IV.; but that the documents and evidence of witnesses proved that only one set of fenders and needles had existed so long, and that the other or lower set were made since that date, and therefore were illegal. They therefore made their order that the lower set of fenders must be shut up permanently, and the lower set of needles be abated and removed, and that the upper fenders and needles, as being a fishing weir, must be altered so as to comply with the 27th section of the Salmon Fishery Act, 1861, 24 & 25 Vict. c. 109,—videlicet, by making a permanent opening in the fenders and in the needles of three feet wide from the bottom to the top, the total width between the island and the right bank being fifteen feet. Against this decision the appellant appealed, and the questions for the court were—

1. Whether upon the facts found as above stated, the decision of the commissioners, that the dam and fenders extending from the island to the right bank of the river do not form part of a fishing mill-dam, is correct in point of law?
2. Whether their decision directing a permanent free gap in the dam and fenders is correct in point of law?
3. Whether their decision that the lower set of needles is illegal, and directing their removal, is correct in point of law?
4. Whether their decision that the lower set of

fenders is illegal, and directing their permanent blocking up, is correct in point of law? *Rolle v. Whyte.*

In delivering the considered judgment of the court, the Lord Chief Justice Cockburn said:—
 “This is a case stated by commissioners under the Salmon Fishery Acts, for the purpose of taking the opinion of this court on the validity of two orders made by the commissioners, whereby the appellant, the Hon. Mark Rolle, was directed, first, to remove a part of a fishing weir maintained by him in the River Taw, in the county of Devon; and secondly, to make a free gap of not less than three feet in the residue of the said fishing weir.

“The appellant, the Hon. Mark Rolle, is the owner of land lying on the right bank of the River Taw. The river runs from south to north, and is not navigable at the part in question. Opposite to the appellant’s lands there are, on his side, at a distance of about fifteen feet from the shore, two small islands, belonging to the appellant, separated from each other by a narrow interval. At the southern or uppermost extremity of the two islands there has been from time immemorial between the island and the mainland a fender or hutch, and lower down the stream certain wooden needles, shaped in the form of a V, with an opening in the lower end, such lower end being placed up the stream, through which salmon on their passage up the river made their way, and being unable to return became enclosed between the fender and the needles, and on the water being shut off by

*Rolle v.
Whyte.*

the fender they are easily taken. This apparatus for taking the fish constitutes, beyond all dispute, a fishing weir within the meaning of the recent acts.

“ About sixty or seventy years ago, at which period the two islands, as now existing, formed only one, an alteration was made by the predecessor of the appellant of the following nature. An opening was made towards the lower part of the island, so that what before had been one island was converted into two, and a portion of the stream on its downward course was enabled to flow through the opening, and to pass between the lower island and the right bank of the stream. At this opening a fender or hutch was placed, which, like the old one, enabled the owner of the island to command the flow of the water. The needles were then removed from their original position to a spot lower down the stream, between the second island and the main land. The effect of this alteration was not only to enlarge the area of the old weir, but also to constitute a much more efficient one than had previously existed. The increased volume and rush of the water, owing to the admission of part of the stream at the opening between the now divided islands, being calculated to attract the fish, and induce them to pass between the land on the appellant's side and the islands in their way up stream. It appeared that the use of the weir thus enlarged and improved had not, so far as its use as a fishing weir was concerned, been interfered with by riparian owners on either side

of the river; but the use of the fender at the opening between the islands had been at times interrupted by the occupiers of a mill situate on the opposite bank, somewhat lower down the stream, called the UMBERLEIGH MILL. *Rolle v. Whyte.*

“It appears that from the north-western extremity of the lowermost of what are now the two islands there has been from time immemorial a dam extending diagonally across the stream to the mill in question, the effect of which dam, operating in conjunction with the island, was to turn the body of the water to the mill. The effect of the newly-made opening being to let a portion of water escape which must otherwise have gone to supply the mill, and this diminution of the water being sufficient when the river was low to interfere with the working of the mill, the miller was accustomed at such times to insist on the new fender being put down, which was done, or, if none of the appellant's people were at hand, the miller went across the dam to the island and put down the fender himself, a proceeding which was always acquiesced in.

“Upon this state of facts the commissioners have made two orders. Holding the old weir to be legal, as having existed prior to the time of Edward I., they have contented themselves with ordering a free gap to be made in it, according to the provisions of sects. 12 and 27 of the Act of 1861 (24 & 25 Vict. c. 109); but they have held the more recent part of the existing weir to be illegal, and have therefore ordered its removal altogether.

*Roll- v.
W'hyte.*

We will deal with the latter part of the order in the first instance.

“ The order for the removal of the new weir is based by the commissioners on the assumption that even if the Magna Charta and the succeeding statutes down to Edward IV. were confined to navigable rivers, yet that the latter statute had a more extensive effect, and that no easement of a fishing weir can have been legally acquired since the date of that statute by a riparian owner in a non-navigable river. We are of opinion that the commissioners are herein wrong, and that the act of 12 Edw. 4, as well as the statutes which preceded it on the subject of weirs, relate to navigable rivers only. It is true that in Magna Charta *kidelli*, or weirs generally, are mentioned as to be put down, not only in the Thames and Medway, but also ‘*per totam Angliam nisi per costeram maris*;’ but the key to this enactment is to be found in the statute of the 25 Edw. 3, st. 4, c. 4, which, after reciting that the ‘common passage of ships and boats in the great rivers of England be often times disturbed by the levying of wears, mills, stanks, stakes and kiddles, to the great damage of the people,’ goes on to provide that ‘all such wears, mills, stanks, stakes, and kiddles, which were levied and set up in the time of King Edward, the King’s grandfather, and after till now in such rivers’ (the words in the Norman-French being ‘*in tielx rivers*,’ though these words are omitted in the English version), ‘whereby the said ships and boats be disturbed, shall be put out

and utterly pulled down, without being renewed.' *Rolle v. Whyte.*
And again, the statute of the 45th of the same king, confirming the foregoing statute with the addition of a penalty on those who should infringe it, refers to the disturbing of the passage of ships and boats in the 'great rivers,' and to the weirs, mills, &c., levied and set up 'in such rivers.' The next statute is that of the 1 Hen. 4, c. 12, which, after reciting the statutes of the 25th and 45th of Edw. 3, further recites the petition of the commons, showing that 'the common passages of ships and boats in the great rivers of England, and also meadows and pastures, and lands sowed adjoining to the said rivers be greatly disturbed, drowned, wasted and destroyed by outrageous enhancing and straitening of weirs, mills, stanks; stakes, and kidels, in old time made and levied before the time of King Edward; son of King Henry, whereof great damages and losses hath come to the people of this realm, and daily will come if remedy be not thereof provided:' then goes on to enact that 'the said statutes be in all their articles holden and firmly kept and duly executed, with all the pains and after the effect of the same,' with a further provision that commissions shall issue 'to survey and keep the waters and great rivers, and to correct and amend the defaults, and to make due execution of the said statutes;' and the commissioners are further to survey the old weirs, &c., made before the time of King Edward, and if such weirs or other things have been 'too much enhanced or straitened,' they are

*Rolle v.
Whyte.*

to correct, pull down and amend them in respect of the excess, reserving, however, the reasonable substance thereof in old times accustomed; and if the owner of the freehold shall not pull down and amend, when adjudged so to do, within six months, or shall thereafter enhance or increase them against the judgment of the commissioners, he is to incur a fine of a hundred marks to the king.

“Next follows the statute of the 4 Hen. 4, c. 11, the preamble of which recites, ‘that by weirs, stakes and kidels, being in the water of Thames and of other “great rivers” through the realm, the common passage of ships and boats is disturbed, and much people perished, and also the fry of young fish destroyed, and against reason wasted and given to swine to eat, contrary to the pleasure of God, and to the great damage of the King and his people:’ goes on to provide that ‘the statutes thereof shall be holden and kept and put in due execution,’ and that commissions shall be awarded to justices and others, to ‘enquire of all that which is contained in the said statutes, and to punish the offenders of the same by fine according to their discretion.’

“In this latter statute, reference is made to a purpose beyond what was referred to in the former statute, namely, the protection of the young fry of fish; but the mention of ‘great rivers’ in the preamble, and the direct reference to the prior statutes, show that the statute was intended to apply only to weirs erected in navi-

gable rivers, and from which obstruction to navigation occurred, although the incidental injury to the fish is thrown in as an additional reason for enforcing the law. Then comes the statute 12 Edw. 4, c. 7, the preamble of which begins by reciting as follows:—‘Whereas by the laudable statute of Magna Charta, among other things, it is contained that all kiddels by Thamise and Medway, and throughout the realm of England, should be taken away, saving by the sea banks, which statute was made for the great wealth of all this land, in avoiding the straitness of all rivers, so that ships and boats might have in them their large and free passage, and also in safeguard of all the fry of fish spawned within the same.’ It then goes on to recite at length the statute of 1 Hen. 4, c. 12, after which it proceeds as follows:—‘Contrary to which great charter, and all the statutes aforesaid, in divers parts of this realm of England, both in the destroying of the fish, as afore is said, and in the disturbance of the passage of ships, barges, boats, and other vessels by divers and many people, divers fish-garths, mills, mill-dams, mill-stanks, locks, ebbing-wears, stakes, kedels, hecks, and flood-gates and divers other disturbances be daily enhanced, levied and enlarged, to the great damage of our lord the king, and of his faithful lieges.’ The statute then proceeds to enact that ‘the statute of the great charta, and all other statutes concerning the premises, shall be duly observed and kept,’ with penalties on those who, within a specified time, shall not obey the award or judgment of the commissioners as to

*Rolle v.
Whyte.*

*Kelle v.
Wyle.*

pulling down or amending of any of the weirs or other disturbances specified.

“Callis, a great authority on these matters, in his work on Sewers (p. 259), expresses a decided opinion that the operation of these statutes is confined to navigable rivers. ‘In my opinion,’ he says, ‘all the aforesaid statutes did extend only to navigable streams and rivers with ships and boats.’ In this opinion we entirely concur. The provision of Magna Charta is, it is true, general in its terms, and *primâ facie* would apply to all rivers; but, as Callis observes (p. 258), ‘the generality of the statute of Magna Charta is restrained by the succeeding statutes.’ The statutes of Edw. III. as well as the first statute of Hen. IV. refer expressly to the ‘great rivers,’ and to the obstruction to the navigation as the sole ground of putting down weirs.

“It is not till the second statute of Hen. IV. that any reference is made to the protection of the fish, but this is spoken of only with reference to the ‘great rivers;’ for this statute, like the later one of Edw. IV., expressly refers to the great rivers, and both statutes are professedly passed to enforce the performance of the former statutes.

“It is further to be observed, as confirming the view that these acts are all confined to navigable rivers, that obstructions are prohibited which, except in navigable rivers, could be of no public detriment; mills, for instance, which are forbidden as interfering with the passage of vessels, would, if established on non-navigable rivers—though they might encroach on the rights of riparian

owners—far from being a public evil, be of benefit to the rest of the neighbourhood. Again, as regards the fish, inasmuch as the public generally have a right to fish in navigable rivers, the destruction of the fry by means of weirs in such rivers was matter of public concern, and became a fit subject of imperial legislation; but, as in other rivers, the riparian owners were alone entitled to take the fish, and, as appears by the case of *Weld v. Hornby* (a), could prevent any interference with the general rights of the riparian proprietors by action, there was no necessity in the case of such rivers for statutory protection. The idea of prohibiting an easement which might otherwise be lawfully acquired, and thus to interfere with private rights in order to secure to the public a larger supply of food, does not appear to have occurred to our earlier legislators. But the very enactment we are called upon to interpret seems to set the matter at rest. If the early statutes prohibited weirs in non-navigable as well as in navigable rivers, the only question as to the former, as well as the latter, would be, whether they existed before the time of Edward I. But the present statute makes a special reservation in favour of weirs lawfully existing by grant or charter, as well as by immemorial user. Now, though length of enjoyment affords legitimate evidence of grant, enjoyment under a grant requires no length of time to give it validity. If, therefore, the legislature had considered that weirs in non-navigable rivers were

*Rolle v.
Whyt.*

(a) 7 East, 195.

*Ross v.
Wyle.*

illegal under the old statutes, they would not have made a reservation in favour of weirs existing by charter or grant at all; or at all events would have amended the condition that the charter or grant should have been anterior to the time of Edward I. But in that case there would have been no necessity for the reservation in question; for it has been held as far back as the case of the *Chester Mill* (b), that the effect of the 25 Edw. 3 is to legalize all weirs which existed before the time of Edward I.

“For these reasons it seems to us clear that, though weirs in navigable rivers are illegal unless they existed before the time of Edward I., such an easement may be acquired in private waters by grant from other riparian owners, or by enjoyment; in short, by any means by which such rights may be constituted.

“The ground on which the commissioners have based their order thus failing, we have next to consider the other grounds on which, on the argument before us, it was contended that the right of the appellant to have the weir in its modern shape failed. In the first place it was urged that, as there was no pretence for saying that there had been any grant from the other riparian owners, and the appellant's right to the weir as an easement must therefore rest on enjoyment alone, so as to bring it within the time required by the 2 & 3 Will. 4, c. 71, the interruption to the use of the weir by the acts of the occupier of the

(b) 10 Rep. 137 b.

Umberleigh Mill in causing the fender between the two islands to be shut down must be fatal to the appellant's right. We, however, think that there is nothing to prevent a second easement being acquired as subordinate to one already existing where the subject-matter admits of it. If the other riparian owners on the stream had granted to the appellant to have a weir for the purpose of taking fish at such times as the whole body of the stream was not needed for the working of the mill, such a grant would have been perfectly good, and would have conferred an easement *pro tanto*; we see no reason why such a qualified easement should not be acquired by user for the time required to confer easements in respect of water. The remaining objection is, that the weir as it now exists is not within the reservation in sect. 12 of the Act of 1861 (24 & 25 Vict. c. 109), as it was not used under any grant or charter, nor has it existed from time immemorial.

“ It must be admitted that the case is not within the words of the reservation if strictly taken ; but the question is whether we may not give a wider construction to the language used. It is impossible to suppose that the legislature intended to make a distinction between an easement acquired by grant and one acquired by length of enjoyment. Under the old law a jury would have been told to presume a grant from a user of sixty years. The Prescription Acts have substituted fixed periods of enjoyment for the fictions of lost grants. The legislature cannot have intended to place an ease-

*Rolle v.
Whyte.*

ment established by long user on a different footing from one acquired by grant, more especially as any such easement acquired by grant, however recent, is protected by the statute. The intention must have been to preserve existing rights however acquired, and though the words used may be artificial, yet if by a liberal construction of the language used we can give effect to such intention we think we ought to do so.

"We are therefore of opinion that the order of the commissioners for the newer portion of the weir cannot be sustained" (c).

*Lord Lecon-
field v. Lord
Lonsdale.*

In *Lord Leconfield v. Lord Lonsdale* (d), at a court of the special commissioners held at Workington to inquire into the use of all fishing weirs and fishing mill dams on the River Derwent, Lord Lonsdale claimed to use a coop at a place called Salmon Hall. A coop is a fishing box forming part of the structure of a dam built across a river. The coop had been, since the Act of 1861, brought into conformity with its provisions. At the place where the coop was fixed the Derwent was a non-navigable river. Evidence as to the antiquity of the fishery was given, and the commissioners stated that they were clearly of opinion that the riparian owners who opposed this coop were entirely right, yet they were bound by the decision in *Rolle v. Whyte*, and therefore bound to decide in favour of the legality of the coop.

Against this decision the respondent appealed, and the commissioners advised the appellant to

(c) L. R., 3 Q. B. 286.

(d) L. R., 5 C. P. 657.

take the case, not to the Queen's Bench, but to one of the other courts, in order to see if they agreed that the commissioners were wrong in their view of the law in *Rolle v. Whyte*. The appeal was accordingly brought to the Common Pleas, and the questions for the court were:—

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“Whether there were any of the statutes before 1861 referred to in the commissioners’ judgment which prohibited the owner of the banks of a non-navigable river from erecting a weir which prevented salmon from going to the upper waters flowing over the lands of the upper riparian owners.

“Whether, by virtue of the statutes referred to in the judgment of the commissioners, such a coop and weir were not prohibited as contrary to public policy, and were not illegal up to 1861, and were not so now, so far as the weir and coop hindered salmon from passing up and down.

“Whether such a fishing weir or coop is an easement.

“Whether such a fishing weir or coop is an easement within the meaning of the Prescription Act.

“Whether, on the facts found in the case, the commissioners were justified in making the order that the coop was legal, subject to the alterations mentioned in their order; and whether they ought not to have made an order to abate the coop.”

The considered judgment of the Court of Common Pleas (Bovill, C. J., Willes and Montague Smith, JJ.) was delivered by the Lord Chief Justice Bovill.—“The fishery commissioners made an order declaring the legality, subject to certain conditions, of a fishing coop or box to

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which Lord Lonsdale claimed to be entitled in a mill-dam across the River Derwent, in Cumberland, and this was an appeal against their order. The decision was given by the commissioners contrary to their own opinion, in deference to the judgment of the Court of Queen's Bench in the case of *Rolle v. Whyte* (e), and they at the same time delivered very able and elaborate reasons to show why, in their judgment, their decision should have been the reverse of that which they pronounced. The present appeal was brought principally for the purpose of taking the opinion of this court as to the propriety of the decision pronounced by the Court of Queen's Bench. As we agree in that decision, it is unnecessary to consider (though the question is a grave one) how far it would have been proper, having regard to the peculiar machinery of the appeal clause under which the case comes before us, to act upon a contrary opinion, had we arrived at one.

“ The first question which arises is, whether the provisions of Magna Charta and the other early statutes which were relied upon as prohibiting weirs were confined to navigable rivers; and that point was elaborately argued before us, and is discussed at large by the fishery commissioners in their judgment. We have carefully considered this point, and concur in the opinion expressed by the Court of Queen's Bench, that these statutes relate to navigable rivers only, and for the reasons which are fully stated in the judgment in the

(e) L. R., 3 Q. B. 286.

Court of Queen's Bench, and which it is therefore unnecessary to repeat. *Lord Leconfield v. Lord Lonsdale.*

"In addition to the passage cited from 'Callis on Sewers,' which the Court of Queen's Bench considered of great weight, there is the higher and weightier authority of Lord Coke (citing a passage from 'Glanville' in the 2nd Institute, referred to in the course of the argument to show that the enactment of Magna Charta applied only to public rivers). If it were otherwise, there would have been a prohibition against erecting weirs in all private rivers, even where a person was the owner of the entire river and of the land on both banks, which, we think, could not have been intended. The record of 6 & 7 Edw. 1, at par. 23 of the case, seems also very strongly to show that at that time the enactment of Magna Charta was not considered to have the effect which is now contended for by the appellants. We think it may also be collected from the observations of Lord Hale in his 'Treatise de Jure Maris,' cc. 3 and 5, that his view of the early statutes was the same as Lord Coke and Callis took of them. We may mention that the record of 6 & 7 Edw. 1, to which we have just referred, and which is spoken of as a local statute for Cumberland in the case, both from its intrinsic character and by reference to the roll, appears to be only a record of proceedings before John de Valibus and others, justices in eyre, and not a 'local act.'

"With respect to the statute of Geo. I., assuming it could alter the case, there is nothing to show that the river therein mentioned is the

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Derwent under consideration. On the contrary, whether the selection is made, *par excellence*, of the rivers mentioned in 'Walton,' pt. 1, c. 19, pt. 2, c. 2, or according to the rule *noscitur à sociis*, as insisted upon in argument, the Derwent in the statute of Geo. I. is a Derwent contributory to the Humber. The mode and order in which the other rivers are named in the act, according to the ordinary rules of construction, exclude the application of it to this river.

"The Solway Acts were referred to in the course of the argument. But it seems to us that they do not affect the present question; that the last act merely regulated the close season, and size and shape of the hecks and meshes; and that it cannot be construed to make this coop legal if it was otherwise illegal at the time of the passing of that act, nor render the entire coop illegal merely because the hecks may have been used contrary to its provisions, so as that penalties were incurred. The weir in this case was in a part of the river above the flow of the tide, and where it was not navigable; and we are of opinion that the use of the weir is not shown to have been unlawful by force of any statute at the time of the passing of the Salmon Fishery Act in 1861. It was contended that, independently of any statute, the erecting a coop of the present description, without any gap or opening in the dam to allow fish to pass, was a public nuisance; but we see no ground for saying that a coop which is not in a public navigable river can be treated as a nuisance. The supposed authorities which were cited do not

appear to us to make out any such proposition; and the passage in the 2nd Institute involves the contrary. The case of *Weld v. Hornby* (*f*), which was relied upon on this point, did not raise any such question. It was an action for a private nuisance, and unquestionably maintainable in respect of the plaintiff's private right of property, which was injured by the act of the defendant in making his weir more impervious to fish, and so preventing them from arriving at the plaintiff's fishery,—a grievance long recognized as giving a right of action, independent of any question of public nuisance. See the precedent in the last case of Year 46, Lib. As. The dictum of Lord Ellenborough must be read as assuming that the river was public; and the marginal note to the report of the case in 3 Smith, 244, expressly refers to it as a public river.

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"Its turning out upon inquiry not to be so in fact at the point where the weir actually was, only shows that Lord Ellenborough was mistaken as to the fact, or that his attention was not at the moment directed to its importance. The dictum was unnecessary to the decision of the case, and is outweighed by the authority of Coke and Glanville. At the same time, it is proper to observe that the opinion thus extrajudicially thrown out has led to much misapprehension, which even the judgment of the Court of Queen's Bench in *Rolle v. Whyte* (*g*) does not appear to have quite corrected. The passage cited from 'Viner's Abridgment,' tit. Nui-

(*f*) 7 East, 195.

(*g*) L. R., 3 Q. B. 286.

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field v. Lord
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sance, 3, was clearly also a case of injury to a private right.

“ It was further contended that a claim to a coop of this description was not within the Prescription Act; and that this coop, having been erected since 1741, and, therefore, not having existed from time immemorial, could not be lawful. If it had been necessary to decide that question, strong arguments were presented to us in support of the conclusion that such a claim is within the Prescription Act, in accordance with the judgment of the Queen's Bench in *Rolle v. Whyte*(*h*); but it is unnecessary to determine that point, because we are of opinion that this coop can be considered as lawfully in use at the time of the passing of the Salmon Fishery Act, 1861, by virtue of a grant, within the meaning of sect. 12 of that act. A grant may be proved either by production of the grant itself or by evidence of enjoyment consistent only with the existence of such a grant, and from which it may be presumed; and there is abundant evidence in this case, by an enjoyment for sixty years, and as far back as living memory extends, of the coop being used in substantially the same manner as it was used in 1861, to show that the commissioners might and ought to find that the right did exist by grant from all the proprietors whose interests could be affected by the coop.

“ The case of *Weld v. Hornby*(*i*), and the ruling of Lord Manners at the trial of the case, were quite in accordance with this view. For these

(*h*) L. R., 3 Q. B. 286.

(*i*) 7 East, 195.

reasons, we think the commissioners were right, upon the facts found in the case, in making the order that this coop was legal, and that our judgment should be in favour of the respondent."

From these decisions the following rules as to the legality of fishing weirs may be laid down :—

Rules as to the legality of fishing weirs.

- (1) That in navigable rivers a fishing weir to be legal must have existed from the time of Edward I., and must have been used on the 6th August, 1861 ;
- (2) That in non-navigable rivers a fishing weir to be legal must have been in existence and used on the 6th August, 1861, and have existed at least twenty years before that date ;
- (3) That a fishing weir must have a free gap of such size as the Act of 1861 prescribes.

As regards what is a legal free gap there is some difficulty of construction in the Salmon Fishery Act, 1861, as stated by the Lord Chief Justice in *Rolle v. Whyte* (j):—When a river is divided into channels by an island and there is a fishing weir across both branches, did the law require a free gap to be made in the fishing weirs in both branches, or was it enough to make it in one? There the commissioners held, that both branches were a distinct river, and ordered free gaps in both, and against this Mr. Rolle appealed. The Lord Chief Justice Cockburn in giving judgment said :—

What is a legal free gap.

Rolle v. Whyte.

" We have to consider that part of the order of

(j) L. R., 3 Q. B. 286.

*Rolle v.
Wright.*

the commissioners which relates to the free gap, which they have directed to be made in the weir.

“ We agree with the commissioners in thinking that the mill-dam extending from the lower of the two islands to the Umlerleigh Mill forms no part of the appellant’s weir, which consists of the fender and needles, and is quite independent of the dam. The fish pass ordered by the commissioners to be made in the dam, as a fishing mill-dam, can in no way affect the obligation of the appellant to make a free gap in his weir. But the question whether the commissioners have authority to order such a free gap to be made is one of no small difficulty.

“ Section 12 of the Act of 1861 (24 & 25 Vict. c. 109), while it makes a reservation in favour of weirs lawfully existing at the passing of the statute, annexes a condition, that no fishing weir, though lawfully in use as aforesaid, shall be used for the purpose of catching salmon, unless it has therein such free gap as is hereinafter mentioned. The subsequent provision as to the free gaps required is to be found in sect. 27 of the act; and it is not a little remarkable that on turning to that section we find that it relates expressly and entirely to weirs extending more than half way across a stream at its lowest state of water, making no provision for weirs of lesser dimensions.

“ If, indeed, we could treat the water flowing between the islands and the appellant’s land as a stream in the sense of the act, the difficulty would not present itself, as the weir extends across the whole of this part of the stream. But we think

we cannot so hold under the circumstances of the *Roller v. Whyte.*
case.

“ It was urged before us on the part of the respondent, that unless the word ‘stream’ in sect. 27 were held to apply to the part of a stream running between the island and the mainland, the result would be, that where a river is divided by an island into two branches, if there were two weirs, each extending from the island to the mainland, the whole would be blocked up; and such, indeed, would be the effect here in consequence of the mill-dam of the opposite proprietor extending across the stream from the other side of the island. This, however, is an accident, and such instances are likely to be of rare occurrence, and can hardly have been in contemplation of the legislature; while, on the other hand, it is to be observed, that if every such part of a stream were within sect. 27, it would follow that in every instance in which such part of a stream is only a few feet in width—as the minimum size of the gap is fixed at three feet—the practical use of such a weir would be destroyed, which would be contrary to the intention of the legislature to preserve existing rights. We are far from saying, that where a river divides itself into two branches and afterwards re-unites, that each of such branches may not constitute a stream within the meaning of the act.

“ Section 32 of the Act of 1865 (28 & 29 Vict. c. 121), which relates to the alteration of existing weirs by order of the secretary of state on the application of the conservators, contains, indeed, an

*Rolle v.
Whyte.*

express provision, that for the purpose of this section, where a river is divided into separate branches, each branch shall be considered as a separate river. The assumed necessity for such an enactment, however, rather tends to show that the language of the prior statute did not admit of such a construction. But assuming that a branch of a river may be treated as a river or stream, the question whether water flowing between an island and the bank of a river can be said to be a branch, must depend on the circumstances of each particular case. In the present instance, the river, we are informed, is 160 feet wide, while the width of the part in question does not exceed 15 feet; we do not think that the narrow passage can be treated as a branch of the river. It was further urged for the respondent, that the use of the word 'stream' in sect. 27 instead of the word 'river,' which occurs in the other sections of the act, was intended to meet such a case as the present, as a narrow portion of a river, though it cannot properly be termed a river, may still be termed a stream. Assuming that there is any foundation for the distinction, yet in sect. 28, which must be read with sect. 27, the term 'river' is again adopted, whence it appears that the word 'stream' in sect. 27 was used as synonymous with river. We can, therefore, attach no importance to the use of the word 'stream' as distinguished from river.

"We are therefore under the necessity of endeavouring to reconcile the inconsistent provisions of ss. 12 and 27 of the act, and the difficulty is

undoubtedly very great. The first of these sections prohibits positively the use of any weir unless the subsequent provision as to free gaps have been complied with. The subsequent provision as to free gaps have no application to weirs not extending beyond the middle of the stream. Section 28, which provides that where a fishing weir is without a legal free gap at the time of the commencement of the act the owner of the weir shall make one within three months under a penalty, affords no assistance, as the legal free gap there referred to must be taken to be a free gap required by the act, no such gap being necessary at law or otherwise than by the operation of the act.

*Rolle v.
Whele.*

“ This being so, how can we best reconcile these inconsistent enactments. It may no doubt be inferred from the generality of the enactment of s. 12, that it was intended by the legislature that in every weir still permitted to exist there should be a free gap for the passage of fish. But unfortunately while the act has specified what will be a sufficient free gap in the case of weirs extending more than half across a stream, it has wholly omitted to give any direction as to what free gaps are to be made in weirs of smaller size. On the other hand, we cannot suppose that the legislature intended to place weirs not-extending beyond the half of the stream in a worse position than weirs of still larger dimensions. But to hold that the appellant could not maintain his weir without having a free gap conformable to the provisions

*Rolle v.
Whyte.*

applicable to it, would have the effect of destroying the appellant's right altogether, which we think cannot have been intended. In this difficulty we think that the only course open to us is to hold that the enactment of section 12, annexing the condition of having a free gap to the continuance of existing weirs, though general in its terms, is applicable only to such weirs as come within section 27. If the conclusion should be inconsistent with the legislature's intention, we must leave it to parliament to amend the statute.

"It follows that the order of the commissioners as to the free gap cannot be upheld."

New definition
of fishing
weir.

In consequence of this decision in *Rolle v. Whyte*, the definition of a fishing weir in the Act of 1861 is repealed, and a new one given in the Act of 1873 (*h*). That statute defines a fishing weir as "any erection, structure, or obstruction fixed to the soil, either temporarily or permanently, across a river or branch of a river, and which is used for the exclusive purpose of catching or facilitating the catching of fish." It will thus be seen that if a fishing weir extends across several branches of a river, there must now be a free gap made in each branch; but it does not go to the length of saying that where a river is divided, as at UMBERLEIGH, by an island, and a fishing weir extends from the island to the bank on both sides of the river, there must be a free gap on each side

(*h*) 36 & 37 Vict. c. 71, s. 4.

of the island. In other words, it would seem that the decision in *Rolle v. Whyte* (1) is still good law.

The restrictions as to fishing weirs in the Salmon Fishery Act, 1861, are as follows:—

Regulation as
to fishing
weirs.

Unless otherwise authorized by the Home Office under the Salmon Fishery Act, 1861, if a fishing weir extends more than half way across any river or branch of a river, at its lowest state of water, it must have a free gap according to the following regulations (m):

- (1) The free gap is to be in the deepest part of the stream, between the points where it is intercepted by the weir (m);
- (2) The sides of the gap must be in a line and parallel to the direction of the stream at the weir (m);
- (3) The bottom of the gap is to be level with the natural bed of the stream above and below the gap (m);
- (4) In its narrowest part the gap must be not less than one-tenth of the width of the stream, it need never be wider than forty feet, but must never be narrower than three feet (m).

In consequence of the new definition given by the Salmon Fishery Act, 1873, a free gap will have to be made in each branch not less than one-tenth of the width of that branch. But it will be seen that these rules only apply to fishing weirs

(1) L. R., 3 Q. B. 286.

(m) 24 & 25 Vict. c. 109, s. 27.

that reach more than half way across a river. To those that do not do so there seems no rule prescribed as to free gaps; and according to the decision in *Rolle v. Whyte* (1), if they were lawfully in use on the 6th August, 1861, they can be used without any free gap at all.

Rules as to
enforcing
free gaps.

In order to enforce free gaps in fishing weirs extending more than half across a river, the Salmon Fishery Act, 1861, has provided the following rules:—

- (1) If on the 1st of October, 1861, a fishing weir was without a legal free gap, the owner of the weir was bound, under a penalty not exceeding 5*l.* a day from the 1st October, 1862, to make a gap within twelve months of the 1st October, 1861(*m*).
- (2) If there was a free gap, but it was not maintained in accordance with the rules in the Salmon Fishery Act, 1861, the owner of the weir incurred a penalty not exceeding 1*l.* a day until it was made to comply with the regulations(*m*).
- (3) No alteration may be made in the bed of any river so as to reduce the flow of water through the gap; if it is made, the person making the same is liable to a penalty not more than 5*l.* for a first offence, and a further penalty of 1*l.* a day until he restore the bed of the river to its original state;

(1) L. R., 3 Q. B. 286.

(*m*) 24 & 25 Vict. c. 109, s. 23.

not less in the whole than 2*l.* 10*s.* nor more than 5*l.* for the second offence; not less than 5*l.* for the third (*n*).

- (4) Placing any obstruction, using any contrivance, doing any act whereby fish may be scared, deterred or in any way prevented entering and passing up and down a free gap at all times of the year (except placing a temporary bridge or board across the free gap, which is removed immediately a person has crossed it) renders the person so doing liable to a penalty of not exceeding 5*l.* for the first offence, not more than 10*l.* nor less than 2*l.* 10*s.* for the second, not less than 5*l.* nor more than 10*l.* for the third, and not less than 10*l.* for the fourth (*n*).

In the construction of boxes and cribs in fishing weirs—

Construction
of boxes in
fishing weirs.

- (a) The upper surface of the sill of the box or crib must be level with the bed of the river (*o*);
- (b) The bars or inscales of the heck or upstream side of the box or crib are to be moveable perpendicular bars, at least two inches apart (*o*).

Any box or crib not in conformity with these rules had to be made so before the 1st April, 1862, otherwise the owner became liable to a penalty of 5*l.* a day for every day after the 1st of

(*n*) 24 & 25 Vict. c. 109, s. 28.

(*o*) Sect. 29.

April, 1862, for which his box or crib did not conform; and if having brought it into conformity he did not so maintain it, he became liable to a penalty of not exceeding 1*l.* a day until he maintained the box or crib in conformity to the act.

Construction
of spur wall.

No box or crib in any fishing weir may have a spur or tail wall, leader or outrigger longer than twenty feet from the upper or lower side of the box or crib; and if any weir has a longer spur or tail wall, leader or outrigger of greater length, the owner is liable to a penalty of 1*l.* a day so long as he allows it to continue (*n*).

Alteration of
free gap.

A board of conservators can, with the sanction of the secretary of state, at their own costs alter any existing free gap or make a new one in any fishing weir on another site, and for this purpose each branch of a river is to be deemed to be a separate river (*o*).

Close time.

Within thirty-six hours after the annual close time has begun the proprietor or occupier of every fishing weir must cause to be removed and carried away from his fishery the inscales, hecks, tops and rails of all boxes, cribs and cruives and other obstructions to the free passage of fish, under a penalty of forfeiting the things not removed and not exceeding 10*l.* a-day for the first offence: not less than 2*l.* 10*s.* nor exceeding 10*l.* for the second; not less than 5*l.* and not exceeding 10*l.* for the third; and not less than 10*l.* for the fourth (*p*).

(*n*) 24 & 25 Vict. c. 109, s. 30.

(*o*) 28 & 29 Vict. c. 121, s. 32.

(*p*) 24 & 25 Vict. c. 109, s. 20.

During the weekly close time a clear opening of not less than four feet in width from the bottom to the top must be maintained through all cribs, boxes and cruives, so as to insure a free space of that width being kept through all boxes, cribs or cruives, if used or not for the purpose of fishing, under a penalty of not exceeding 5*l.* for the first offence and 1*l.* in respect of each fish taken; of not less than 2*l.* 10*s.* in the whole for the second and not exceeding 5*l.* and 1*l.* for each fish; of not less in the whole than 5*l.* and not exceeding 5*l.* and 1*l.* for each fish taken for the third; of not less than 5*l.* and 1*l.* for each fish taken for the fourth, and in all cases forfeiture of all fish caught, and, after a second conviction, on every subsequent one forfeiture of licence (*q*).

Weekly close time.

SECT. 4.—*Fishing Mill-Dams.*

The Salmon Fishery Act, 1861, defines a fishing mill-dam to be “a dam used or intended to be used partly for the purpose of catching or facilitating the catching of fish, and partly for the purpose of supplying mills with water” (*r*). And the 12th section of the same act places restrictions on the use of fishing mill-dams, so that a fishing mill-dam that may now be lawfully used for catching salmon must satisfy all the following conditions:—

Definition of fishing mill-dam.

Rules as to fishing mill-dam.

- (1) It must have been lawfully in use on the

(*q*) 24 & 25 Vict. c. 109, s. 22.

(*r*) Sect. 4.

Rules as to
fishing mill-
dam.

6th August, 1861, by virtue of grant, charter or immemorial usage (s):

- (2) It must have attached to it a fish pass of such form and dimensions as the Home Office may approve (s):
- (3) Such fish pass must have constantly running through it such a flow of water as will enable salmon to pass up and down it (s):
- (4) If a box or crib is used in connection with it, the box or crib must be so constructed that—
 - (a) The upper surface of the sill must be level with the bed of the river;
 - (b) The bars or inscales of the heck or upstream side of the box or crib are to be at least two inches apart, placed perpendicularly and capable of removal (t):
- (5) No spur, tail wall, leader or outrigger to any box or crib shall be of a greater length than twenty feet from the upper or lower side of such box or crib (u).

Penalties.

The penalty for using an illegal dam is—

- (a) Forfeiture of all traps, nets and contrivances used for the purpose of catching salmon;
- (b) All salmon caught;
- (c) Not exceeding 5*l.* and 1*l.* for each salmon caught, for the first offence:

(s) 24 & 25 Vict. c. 109, s. 12.

(t) Sect. 29.

(u) Sect. 30.

not less than 2*l.* 10*s.* in all and not exceeding 5*l.* and 1*l.* for each salmon for the second offence; not less than 5*l.* in all and not exceeding 5*l.* and 1*l.* for each salmon for the third; and not less than 5*l.* and 1*l.* for each fish for the fourth.

For using a fishing mill-dam without a proper fish pass the penalties are the same as for using an illegal fishing mill-dam (*v*).

The penalty for not having a box or crib properly constructed is,—for failing to construct it properly, not exceeding 5*l.* a day for the first offence; not less in the whole than 2*l.* 10*s.* nor exceeding 5*l.* a day for the second; not less in the whole than 5*l.* nor exceeding 5*l.* a day for the third; not less than 5*l.* a day for the fourth;—and for not maintaining such box or crib in the prescribed form, not exceeding 1*l.* a day for the first offence; not less in the whole than 2*l.* 10*s.* nor exceeding 1*l.* a day for the second; not less in the whole than 5*l.* and not exceeding 1*l.* a day for the third; not less than 1*l.* a day for the fourth (*w*).

The penalty for having an outrigger or leader over twenty feet long is,—not exceeding 1*l.* day for the first offence; not less in the whole than 2*l.* 10*s.* and not exceeding 1*l.* a day for the second; not less than 5*l.* in the whole and not exceeding 1*l.* a

(*v*) 24 & 25 Vict. c. 109, s. 12.

(*w*) Sect. 29.

day for the third; and not less than 1*l.* a day for the fourth (*x*).

Close time.

Within thirty-six hours from the beginning of the annual close time all inscales, hecks, tops and rails, planks and temporary fixtures of cruives, boxes or cribs in any fishing mill-dam must be removed, under a penalty of the forfeiture of all things not removed and carried away, and of not exceeding 10*l.* a day for each day until they are removed for the first offence; not less than 2*l.* 10*s.* in all nor more than 10*l.* a day for the second; not less than 5*l.* in all nor more than 10*l.* a day for the third; not less than 10*l.* a day for the fourth offence (*y*).

Weekly close time.

If a clear opening of four feet in width from the top to the bottom is not kept during the weekly close time in all boxes, cribs and cruives in any fishing mill-dam for taking salmon, the proprietor or occupier of such fishing mill-dam incurs the following penalties:—Forfeiture of all fish caught during weekly close time and a sum of not exceeding 5*l.* and 1*l.* for each fish for a first offence; of not less in the whole than 2*l.* 10*s.* nor exceeding 5*l.* and 1*l.* a fish for the second; of not less than 5*l.* in the whole nor more than 5*l.* and 1*l.* for each fish for the third; of not less than 5*l.* and 1*l.* for each fish for the fourth (*z*).

What is a fishing mill dam.

As to what constitutes a fishing mill-dam, there can be no doubt that if any trap or contrivance

(*x*) 24 & 25 Vict. c. 109, s. 30.

(*y*) Sect. 20.

(*z*) Sect. 22.

for taking fish either forms part of the actual structure, as in the case of the Salmon Hall coop, in *Lord Leconfield v. Lord Lonsdale* (z), or is situated so near the dam as though not actually but practically to be part of the dam, as in the case of the Chester Weir, where the coop was fifty yards below the dam, that these are fishing mill-dams, used, if not for the purpose of catching, at least for facilitating the catching, of fish (a). But if there is neither actually nor practically any contrivance for taking fish forming part of the dam, it cannot be regarded as a fishing mill-dam within the Salmon Fishery Acts. This point was settled in the case of *Garnett v. Backhouse* (b). This was an appeal from a decision of the special commissioners for English fisheries, who were empowered by the Salmon Fishery Act, 1865 (c), to inquire into the legality of all fishing mill-dams. In pursuance of this power they summoned Messrs. Garnett before them, for the purpose of inquiring into the legality of a mill-dam situate in the River Ribble, at Low Moor, near Clitheroe, of which the appellants were owners. The mill in connection therewith was a cotton mill, and had two wheels and a turbine, all supplied with water from the river.

*Garnett v.
Backhouse.*

At the place in question the River Ribble is not navigable, and is a salmon river, and there are

(z) L. R., 5 C. P. 657.

(a) *Moulton v. Wilby*, 8 L. T., N. S. 284; 9 Jur., N. S. 472; 32 L. J. 178; 2 N. R. 40; see *ante*, p. 219.

(b) L. R., 3 Q. B. 30.

(c) 28 & 29 Vict. c. 121, s. 42.

*Garnett v.
Hackhouse.*

above and below the dam spawning beds of great value to which the fish resort. The appellants are owners in fee of the land on the left bank or Lancashire side of the river, and have a lease of the land on the right bank. The dam which pens the water up for the supply of the mill is situate about two-thirds of a mile above the mill, and the water which passes down the mill-leat and through the mill is returned to the channel of the river about 100 yards below the mill. The length of the natural channel of the river, between the dam and the point where the water after passing through the mill is returned to the river, is rather more than two-thirds of a mile, and the appellants are owners or lessees of the land on both sides of all this part of the river.

The mill-dam crosses the bed of the river nearly at right angles, but in a crescent form, and is in its lower part a solid structure of stone and mortar. The upper part of the dam consists of planks about twenty inches wide set on their edges, and these planks accordingly add twenty inches of height to the stonework on which they rest. The sluice of the mill-leat is on the left bank of the river, and forms the end of the dam at that side. At the other end of the dam, which adjoins the opposite or right bank, a part of the stonework for a length of about seventeen feet is twelve inches lower than the remaining stonework of the dam, and the top of this part, which also consists of wood of the same height as the planking on the top of the remaining part of the dam, is called a baulk. This baulk, which is in fact a

strong piece of wood seventeen feet long and thirty inches deep, has a hinge at one end, and is capable of being raised by means of a screw, so that when raised perpendicularly on the hinge it makes a triangular opening in the body of the dam, the opening at the wide end being about two feet. This was constructed by one of the appellants more than forty years ago.

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Backhouse.*

The bed of the river immediately under the dam is rocky, and there are several pools from three to six feet deep close to the lower side of the dam and the bed of the river; between the mill-dam and the place where the mill-race rejoins the river, a length which is above two-thirds of a mile, is also rocky, but there are occasional pools of water. The stonework part of the dam on its lower side or face is perpendicular, and varies from eight feet to eighteen inches high above the bed of the river, and the planks add twenty inches more to this height. When the baulk is shut salmon cannot jump over the dam owing to its height. During the four driest months of the year, whenever the baulk is shut, the bed of the river for about two-thirds of a mile is nearly dry, but during the night the baulk is usually left open. When the baulk is shut during the day the whole of the water of the river passes down the mill-race to supply the mill, there being then not enough water for such supply. During that time salmon cannot pass up the channel of the river towards the mill-dam, or can do so on very rare occasions of flood, and when they arrive at the

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dam it is too high when the baulk is shut to allow them to jump over, so as to reach the spawning grounds above the dam. But on all occasions of flood the baulk is kept open both night and day. In their efforts to get up to the mill-dam the fish are often found lying in small pools of water, and can be caught by hand in the shallows, or can be easily fished out of the pools with a net. There is no box, cruive, or crib, or appliance or contrivance of any kind whatever for catching fish placed immediately behind or as part of the mill-dam.

It was stated by the appellants' witnesses that the mill-dam had been built in 1784, but no document of title was produced by the appellants earlier than a lease for a term of eleven years, made in 1820, in favour of the appellants' predecessors, who had since then purchased the fee of the left bank of the river adjoining the mill-leat or race, the appellants' counsel stating as a reason that he relied upon user. It was further proved that the baulk or moveable board was lifted only when there was enough water to supply the mill. The baulk had been put up by the owners of the dam to enable fish to get over the dam, but they stated that there was no obligation on them to make such a baulk. The appellants' witnesses stated that the dam and the planks on the top of it had existed as they were now more than fifty years. In order to facilitate the ascent of fish, an artificial pass or slope, consisting of large stones and planks of wood leading up to the baulk, has been made,

and the fish can for the most part, by means of these planks, get up to and through the opening made by the baulk when such baulk is lifted, and thereby an opening is made in the dam.

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The appellants have authorized, on one occasion, a person who owned the other half of the river to fish the mill-pool above the dam, and the appellants themselves have caught fish in the river below the dam; when the water is low the pools are easily fished; but they stated that this was merely to supply their table or to give presents to their friends. They also stated that they had never sold a fish since they had owned the fishery nor let the right to any person, and for one period of ten years they neither caught nor permitted one to be caught. They have caught the fish by means of a net dropped in a pool which is situated about sixty yards below the dam, and when so doing have employed men on one or two occasions to beat the water from a point about thirty or forty yards nearer the dam down to this pool, and they have the exclusive right to catch as many fish as they please there, both sides of the river being their own property. The appellants have also occasionally found salmon lying almost dry in the bed of the river below the dam after a flood.

On the part of the respondent it was proved by a water bailiff, who had constant opportunities of watching the effect of the mill-dam on the fish, that it would greatly facilitate the capture of the fish. That when the baulk was suddenly shut down when the water was low, and the bed of the

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Backhouse.*

river was thereby made nearly dry, the fish could be caught by hand as they lay stranded on the bank, or they could be easily taken by means of a net out of the few pools left. That he had seen the appellants with a net there and catching the fish. That he had found fish heavy with spawn lying unable to move in the shallow water created by the mill-dam, and had occasionally with his own hands lifted them over the dam, and he thought that the planks on the top of the weir had been gradually made higher during the last thirty-five years on each occasion when they were renewed, and that though some fish got through the baulk when it was open, others were unable to do so, and when the baulk was shut no fish could get over, and that consequently the fish often crowded at the foot of the dam waiting to pass over but being unable to do so.

It was further proved by the respondent that in its present state the mill-dam, when the baulk was down, hindered the fish from going up the river to spawn, and that in order to allow sufficient water to flow over the dam constantly down the natural channel of the river, and at the same time to permit the fish to go up to and over the dam, it was necessary that the planks along the top of the stonework should be removed altogether, and that the baulk should be removed, and also two inches more should be cut away immediately under the baulk.

The commissioners found, as facts, that this mill-dam had been built subsequent to 1714;

that the planks on the top of the stonework had been first put there subsequent to 1829; and that the dam had been used in its present state since that time. That the dam facilitated the catching of fish, and had been used by the owners for that purpose. That the dam also hindered the fish from passing up the river to spawn, and that in order to render the dam incapable of catching fish, with the least injury to the milling power, it was necessary that the planks should be removed altogether, and also the baulk, and two inches more under the baulk, and so kept during the whole year.

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They also held that the dam was a fishing mill-dam within the definition of the Salmon Fishery Act, 1861, and that they had jurisdiction to inquire into its legality, and that the sects. 23—25 of 24 & 25 Vict. c. 109, applied only to cases where volunteers put fish passes at their own risk, but not to this case. That by reason of the express prohibition of the statute of 1 Geo. 1, st. 2, c. 18, s. 14, this dam had been illegal up to 1861, so far as it so hindered the fish going up to spawn; that the Prescription Act had no application, seeing that the right claimed under it had been made legal since, and they made an order that the dam should be made incapable of catching fish, by removing permanently the planks along the top of the stonework of the weir, by permanently removing the baulk, and two inches more immediately under the baulk. At the same time the commissioners were of opinion that if in carrying

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out their order the appellant satisfied them that an efficient fish pass could be made by a less alteration of the dam, this part of the order would not be insisted upon.

The questions for the court were:—(1) Whether, upon the evidence, the commissioners were bound, as matter of law, to hold that this dam was not a fishing mill-dam within the meaning of the Salmon Fishery Acts, and so that they had no jurisdiction to inquire into its legality? (2) If they had jurisdiction, whether, by reason of the user since 1829, the Prescription Act rendered the dam legal in its present state, notwithstanding the 1 Geo. 1, st. 2, c. 18, s. 14? (3) Whether, if the dam was illegal up to 1861, so far as it hindered fish passing up to spawn, it has since been rendered legal in that respect by means of the Salmon Fishery Acts? (4) Whether there was evidence to justify the commissioners in making the order above stated?

The Lord Chief Justice Cockburn, in giving judgment, said: "It seems to me to be quite clear that the legislature, by the Act of 1861, intended to provide for three kinds of obstructions which might be presented to the passing of salmon up the river. These obstructions must be considered with reference to sect. 4 of the Act of 1861, which is the defining section, and which refers to three forms of obstruction, viz., dams, fishing weirs, and fishing mill-dams, and defines the meaning of these words: 'Dam shall mean all weirs and other fixed obstructions used for the

purpose of damming up water.' 'Fishing weir shall mean a dam used for the exclusive purpose of catching or facilitating the catching of fish.' 'Fishing mill-dam shall mean a dam used, or intended to be used, partly for the purpose of catching, or facilitating the catching, of fish, and partly for the purpose of supplying water for milling or other purposes.'

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"It is over obstructions, thus defined, that the Acts of 1861 and 1865 give the authority which has been exercised in this case. We find that these two statutes provide differently with regard to cases of dams and of the other kinds of obstruction. By sect. 12 of the Act of 1861, provision is made with regard to dams as distinguished from fishing weirs and fishing mill-dams. This section enacts that 'no dam, except such fishing weirs and fishing mill-dams as are lawfully in use at the time of the passing of this act, by virtue of a grant or charter, or immemorial usage, shall be used for the purpose of catching, or facilitating the catching, of salmon.' The section then imposes certain penalties upon any persons acting in contravention of its provisions, and goes on to provide for the cases of fishing weirs and fishing mill-dams.

"When we come to sect. 42 of the subsequent Act of 1865, we find that the commissioners have authority only over fishing weirs and fishing mill-dams.

"They have power under this section to remove such fishing weirs, and to render incapable of

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Buckhouse.*

catching fish such fishing mill-dams as are in contravention of the Act of 1861. But their authority is limited to fishing weirs and fishing mill-dams. Dams, as distinguished from the other two forms of obstruction, do not come within sect. 42 of the Act of 1865, although capable of being used for the purpose of catching, or of facilitating the catching, of fish. We have, therefore, in this case simply to inquire whether the obstruction in question is a fishing mill-dam or a dam, as it is clearly not a fishing weir. This is rather a question of fact than of law. Fishing weirs are out of the question, as they are only such obstructions as are used simply and solely for the purpose of catching, or facilitating the catching, of fish. Fishing mill-dams and dams may, I think, be thus distinguished: dams may be erected simply for the purpose of turning water. This may be done legitimately, so long as the rights of riparian owners are not interfered with. A dam so erected may, however, render it easy to take salmon which otherwise could not be taken. If so, the case falls within sect. 12 of the Act of 1861, and any person availing himself of these facilities for the purpose of catching salmon becomes liable to the penalties imposed by that section. A fishing mill-dam I take to be—a dam erected for the purpose of supplying water to a mill, and of enabling persons to catch fish. Whether it is erected for this double purpose, or is used for this double purpose, is the same. If intended to effect, or used to effect, this double purpose, it is a fishing mill-dam.

“ Now, what are the facts in this case? The dam in question was erected for the sole purpose of supplying the mill with water. The result of this is, that the water is reduced so low below the dam that salmon may be taken more easily than would be the case if there were no dam. The proprietor of the mill, availing himself of this facility, takes fish occasionally. He is thus liable to the penalties of sect. 12 of the Act of 1861, but he does not, therefore, lose his right to use the dam for his mill. He is not thereby put into the position of those who use a fishing mill-dam. Mr. Hannen has ingeniously argued that, as the River Ribble is expressly mentioned in the statute 1 Geo. 1, st. 2, c. 18, any dam which had the effect of preventing salmon from passing up the river to spawn must be illegal, and that, therefore, this dam was always illegal up to the time of the passing of the Act of 1861, and that, therefore, no right to it could be gained by user or prescription. *Garnett v. Backhouse.*

“ I think, however, that a person might have a right to construct such a dam as this by consent of the riparian owners, although it might be in contravention of an act of parliament. He would have been liable to a penalty if the dam obstructed the fish, but still he might have a right to the dam as against other riparian owners. The way, however, to look at this question, is to see what would be the state of things if, after the repeal of 1 Geo. 1, st. 2, c. 18, the appellants, with the consent of the other riparian owners, erected a dam like this for

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The mischief, therefore, against which the acts have been passed, are sufficiently provided for by this section. Therefore, I am of opinion that the argument of Mr. Hannen ought not to prevail, and that the order of the commissioners was wrong."

Mr. Justice Lush said: "I think this dam might have been an illegal obstruction so long as 1 Geo. 1, st. 2, c. 18, remained in effect. That act provided, that any obstruction whereby the salmon may be hindered from passing or going up the river mentioned in that act to spawn, was illegal. This dam had that effect, and, therefore, any person erecting or keeping up this dam would have been liable under sect. 14 of that act to a penalty, and liable also to have the dam demolished or removed. This section of the act was, however, repealed by sect. 39 of the Act of 1861. The power of abating obstructions given to the commissioners by the Act of 1865 is confined to such fishing weirs and fishing mill-dams as are in contravention of the Act of 1861. In order, therefore, to ascertain to what dams this power extends, we must look to the definition of fishing weirs, and of fishing mill-dams, in sect. 4 of the Act of 1861. The dam in this case is clearly not a fishing weir within that section. But is it a fishing mill-dam? [The learned judge read the definition in the section.] Therefore, from the time of the passing of this act, which repealed the statute of 1 Geo. 1, st. 2, c. 18, a mill-dam is no longer liable to be demolished as such, because it does not fall within

the description of dam which the commissioners have power to abate. A fishing mill-dam, by the definition of the Act of 1861, means a dam which contains something in its construction which gives it a double character, and which makes it fit for the purpose of catching or facilitating the catching of fish, over and above what is necessary for mill-ing purposes. To the extent that it is calculated to serve this purpose the commissioners have power to abate it. They have, however, no power to abate this dam, as it is only a mill-dam properly so called. This is clear from the facts stated in the case. It has incidentally the effect of facilitating the catching of fish, because there is not water enough for the fish to go over the dam, and they may be taken in the pools below. If, however, the fish are thus taken, sect. 12 of the Act of 1861 comes into operation. That section only uses the word 'dam,' which includes a dam such as the one in the present case. Salmon fisheries are, therefore, sufficiently protected. This section shows that the legislature assumed some dams were lawful, and only imposed a penalty upon their misuse. For these reasons I am of opinion that the commissioners have exceeded their powers, and that our judgment must be for the appellants."

The Salmon Fishery Act, 1865 (*a*), provided, that if the special commissioners found any fishing mill-dam to be illegal only by reason of its not having a fish pass, and the owner was willing to

*Garnett v.
Backhouse.*

Provision as
to legal weir
unprovided
with fish
pass.

(a) 28 & 29 Vict. c. 121, s. 42.

give an undertaking to make a fish pass within a reasonable time to be prescribed by the commissioners, and made such fish pass accordingly, the commissioners had no power to order the fishing mill-dam to be made incapable of catching fish. As in several cases from different causes where fishing mill-dams were found illegal only by having no fish pass attached, the owners had not fixed passes within the time named by the commissioners, and as it was desirable to fix some time after which, if a fish pass was not attached, fishing should be illegal, the Salmon Fishery Act, 1873 (*b*), provides, that if the owner place a fish pass in his dam before the 1st January, 1875, then, irrespective of any provision in the Act of 1865, he may continue to use his dam for fishing; but if he does not, his right to do so is absolutely lost, and the conservators are to give him notice to remove all contrivances whatever for catching salmon, and if he does not they are to do so.

SECT. 5.—*Prohibition of killing certain Fish.*

No person may, unless he either takes the fish accidentally, and at once returns it to the water with the least possible injury (*c*), or takes it with the written consent of the board of conservators of the district where such fish are caught, for artificial propagation or other scientific purposes (*d*), may

(*b*) 36 & 37 Vict. c. 71, s. 51.

(*c*) 24 & 25 Vict. c. 109, s. 14.

(*d*) 28 & 29 Vict. c. 121, s. 60.

kill, injure, attempt to take, take, buy, sell, expose for sale, or have in his possession—

- (1) Any unclean or unseasonable salmon, trout or char (e); Unclean and unseasonable salmon.

Take, destroy, buy, sell, expose for sale, or have in his possession—

- (2) The young of any salmon, that is, any fry, samlet, smoult, smelt, skirling, skarling, par, spawn, pink, last spring, hepper, last brood, gravelling, shed, scad, blue fin, black tip, fingerling, brandling or brondling. Young of salmon.

Under the following penalties as to any unclean or unseasonable salmon, trout or char, forfeiture of the fish, and on a second conviction, if a licensee, forfeiture of licence: not exceeding 5*l.* and 1*l.* in respect of each fish for a first offence; not less than 2*l.* 10*s.* in the whole and not exceeding 5*l.* and 1*l.* for each fish for a second offence; not less in the whole than 5*l.* nor more than 5*l.* and 1*l.* for each fish for the third, or imprisonment with or without hard labour for not less than one month nor more than six months; and for a fourth offence, a fine of not less than 5*l.* and 1*l.* for each fish, or imprisonment at the discretion of the court. Penalties as to unclean and unseasonable salmon.

As to the young of salmon, the penalties are— Penalties as to young of salmon.

- (1) Forfeiture of all the young of salmon:
- (2) Forfeiture of whatever the young salmon were caught with:

- (3) Not exceeding 5*l.* for the first offence; not less than 2*l.* 10*s.* nor more than 5*l.* for the second; not less than 5*l.* for the third.

What are unclean and unseasonable salmon.

As to what constitutes unclean and unseasonable salmon it is most difficult to say. Unseasonable salmon seem to be all salmon out of season, that is, all salmon taken during the annual close time. Unclean salmon would seem to be salmon unfit to be taken wherever and whenever caught, even if during the open season; thus a kelt would be an unclean salmon, a clean run fish caught in December an unseasonable fish.

Hopton v. Thirlwall.

In order to secure a conviction for taking the young of salmon, it must be proved that the person who took them knew that he was catching the young of salmon; this was decided in the case of *Hopton v. Thirlwall* (*f*). There Mr. Hopton was charged with taking the young of salmon. It was proved that he was found fishing in the River Ithon by the appellant, who searched Mr. Hopton's basket, and found in it several trout, and eight or ten fresh killed young salmon. Mr. Hopton said he was fishing for trout; he had caught all the fish, but believed that the young salmon were trout. On the hearing of the case, the justices found, as facts, that the respondent had taken certain fish called samlets, that he did not know that they were samlets, and that he had not taken them wilfully; and they therefore declined to convict the defendant under the 15th section of the Salmon

(*f*) 9 L. T., N. S. 327; 3 N. R. 70; 12 W. R. 72.

Fishery Act, 1861, and the question for the Court of Queen's Bench (Cockburn, C. J., Wightman and Mellor, JJ.) was, if they were right in law for so doing. *Hopton v. Thirtwall.*

The Lord Chief Justice said wilfully is always implied if it is not expressed. A man is bound to know the law, but he is not bound to know facts. The court accordingly decided that the magistrates were right in not convicting Mr. Hopton.

No person may—

- (1) Place any device to obstruct the passage of the young of salmon (*g*): *Injuring the young of salmon.*
- (2) Wilfully injure the young of salmon :
- (3) Wilfully disturb any spawning bed, or any bank or shallow on which the spawn of salmon may be, except that this provision does not apply to the legal right of any owner to take materials from any stream (*g*). *Disturbing spawning beds.*

If any person does any of these things he forfeits the device or instrument used in doing them, and is liable to a penalty not exceeding 5*l.* for a first offence; of not less than 2*l.* 10*s.* nor more than 5*l.* for a second; of not less than 5*l.* for a third (*g*). *Penalties.*

Except with the written consent of the board of conservators for the district for taking salmon, for artificial propagation or scientific purposes, any one wilfully disturbing or attempting to catch salmon when spawning, or near their spawning beds, is liable to a penalty for a first offence *Disturbing spawning fish.*

not exceeding 5*l.*; for a second not less than 2*l.* 10*s.* and not exceeding 5*l.*; for a third of not less than 5*l.* (*h*).

Fry of eels.

No person may at any time take or destroy the fry of eels (*i*); or place in any inland water any device to catch or obstruct fish descending the stream (*i*); under a penalty not exceeding 2*l.* a day for a first offence; not less than 2*l.* 10*s.* in the whole nor more than 2*l.* a day for the second; not less than 5*l.* in the whole nor more than 2*l.* a day for the third; not less than 2*l.* a day for the fourth offence; and if a licensee, or a second and any subsequent conviction, he will forfeit his licence (*i*).

SECT. 6.—*Pollutions.*

The Salmon Fishery Act, 1861, specifies pollution among the prohibited means of destroying fish. Pollutions are perhaps the most deadly enemy that the fisheries of this country have to encounter, and the one of all others in respect of which boards of conservators have the least power. For unless they are prepared to embark upon expensive and costly litigation in a court of equity, there is no effectual means of stopping pollutions.

Provisions of
Salmon
Fishery Act,
1861, as to
pollutions.

The Salmon Fishery Act, 1861, contains a general clause (*h*) dealing with all pollutions. It

(*h*) 24 & 25 Vict. c. 109, s. 16.

(*i*) 36 & 37 Vict. c. 71, s. 15.

(*k*) 24 & 25 Vict. c. 109, s. 5.

makes every person who causes or knowingly permits to flow, or puts or knowingly permits to be put, into any water containing salmon, or into the tributaries of any water containing salmon, any liquid or solid matter to such an extent as to cause the waters, either those containing salmon or their tributaries, to poison or kill fish, liable to heavy penalties.

To insure a conviction under this clause the prosecutor must prove—

*Requisites
for a conviction.*

- (1) That into some water containing salmon, or into the tributaries of water containing salmon, liquid or solid poisonous matter was knowingly permitted to flow or to be placed:
- (2) That the liquid or solid poisonous matter, either in the tributary of the water containing salmon or in the water itself, did actually poison or kill fish.

The gist of the offence is that the waters contained salmon, that poisonous matter was placed, and that fish were killed. It does not matter what fish, but some fish must be actually killed. If this can be proved, then the person causing the pollution is liable to the following penalties (1):—

- (1) Upon a first conviction not exceeding 5*l.*: *Penalties.*
- (2) Upon a second conviction not less than 2*l.* 10*s.* and not exceeding 10*l.*, and a further penalty not exceeding 2*l.* a day for each day the offence is continued, but

(1) 24 & 25 Vict. c. 109, s. 5.

the justices need not inflict a greater penalty in the whole than 2*l.* 10*s.* :

- (3) For a third offence of not less than 5*l.* and not exceeding 20*l.* a-day for every day during which the offence is continued, dating from the date of the third conviction, but the justices need not inflict a greater penalty than 5*l.* in the whole:
- (4) For the fourth offence a penalty not less than 20*l.* a day, dating from the day of the third conviction (*m*).

Exceptions.

But these penalties will not apply in the following case:—

If the pollution be done in exercise of a right to which the person is by law entitled; and if he prove to the satisfaction of the court that he has used the best practicable means within a reasonable cost to render harmless the liquid or solid matter which has been placed in the waters (*m*).

The clause does not prevent the person polluting the water from acquiring a legal right if he could so have acquired it if the Salmon Fishery Act, 1861, had not been passed (*m*).

Nor does it exempt any one from any punishment to which he would otherwise be subject, so that instead of proceeding summarily before the magistrate in the case of any pollution the person prosecuting can proceed by indictment, action, or bill in equity (*m*).

(*m*) 24 & 25 Vict. c. 109, s. 5.

Nor does it legalize any act or default that would otherwise have been deemed a nuisance and contrary to law (*n*).

The Salmon Fishery Act, 1861, provides that if proceedings in respect of a pollution are commenced against a defendant and he alleges before the magistrate that he has used the best means within a reasonable cost to render this polluting matter harmless, and proves to the court that if he was called upon to permanently prevent the pollution the cost would be over 100*l.*, on his giving such security as the court shall approve to try the case, and to abide the result of the trial, the proceedings before the justices are to be stayed, and the complainant is to bring an action in one of the superior courts of law at Westminster against the defendant, and in such action one of the issues to be tried is to be: Has the defendant used the best means within a reasonable cost to render the polluting matter harmless; if there is any dispute as to the form of the issues, or if the defendant does not appear, they are to be settled by the court, and the action is to be tried in the same way and subject to the same incidents as an ordinary action in the superior courts of law (*o*). Unless the court orders a new trial the verdict in such action shall be conclusive on the points involved in the trial in any subsequent proceedings under the Salmon Fishery Act (*p*).

Procedure as to trial of cases of pollution by a jury.

Effect of trial.

(*n*) 24 & 25 Vict. c. 109, s. 5.

(*o*) Sect. 6.

(*p*) Sect. 7.

Costs.

The costs before the justices in the first instance are to be regarded as costs in the action and recovered accordingly (*p*).

Poisoning
water.

In order to prevent the malicious casting of deleterious substances into the water to kill fish the Salmon Fishery Act, 1873 (*q*), extends the 32nd section of the Malicious Injuries to Property Act (*r*) to salmon fisheries, and provides that whosoever shall unlawfully and maliciously put any lime or other noxious material in any salmon river, with intent thereby to destroy any of the fish that are therein, shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be kept in penal servitude for any term not exceeding seven years and not less than five years, or imprisoned for any term not exceeding two years, with or without hard labour, with or without solitary confinement, and, if a male under sixteen, with or without whipping. This provision, it is to be hoped, will meet the case, and put a stop to a practice, that has lately become very common, of throwing dynamite into rivers to kill and destroy the fish.

Gas pollution.

As regards the pollution of rivers by gas very stringent provisions are contained in the Gas Works Clauses Act, 1847 (*s*). That act provides that if any gas company cause any gas washings or substances produced in making or supplying

(*p*) 24 & 25 Vict. c. 109, s. 7.

(*q*) 36 & 37 Vict. c. 71, s. 13.

(*r*) 24 & 25 Vict. c. 97, s. 32.

(*s*) 10 Vict. c. 15.

gas to flow into any stream, or do any act connected with the making of gas whereby any stream is fouled, the company are liable to a penalty of 200*l.*, to be recovered with full costs of suit, if sued for within six months after the pollution has occurred, by the person into whose water the washing had been conveyed, or whose stream had been fouled. And if such person give notice in writing to the gas company, they are liable to an additional penalty of 20*l.* a day, to be recovered in the same way, for every day during which such pollution lasts.

If any water is fouled by gas, the gas company are liable to pay to the person whose water is fouled a penalty of 20*l.*, and 10*l.* a day after notice has been given. But none of these penalties extend to exempt the gas company being indicted for a nuisance.

It will be observed that under the act the board of conservators as such have no power, the remedy in all cases being given to the person injured.

Such are the remedies that now exist for dealing with pollution. Of course there are also the usual remedies of action, indictment and injunction in equity to restrain pollutions. What the board of conservators want is a cheap and inexpensive mode of dealing with all pollutions from whatever cause; and it is to be hoped, not only in the interest of fish, but also in that of public health, that the time is not far distant when there will be some legislation dealing with the subject.

Statutes as to the Law of Fishing.

SECT. 1.—PROHIBITION OF KILLING FISH IN CERTAIN WAYS.

No person shall do the following things or any of them; that is to say,—

Penalty on
fishing with
lights, spears,
&c.

- (1) Use any light for the purpose of catching salmon (*t*), trout (*u*) or char (*x*):
- (2) Use any otter lath or jack, (including therein any small boat or vessel, board, or stick, used for the purpose of running out baits, artificial or otherwise, across any portion of any lake or river, and whether used with a hand line or as auxiliary to a rod and line, or in any other way (*y*),) wire or snare, spear, gaff, strokehall, including any instrument or device, whether used with a rod and line or otherwise, for the purpose of foul-hooking any fish, or other like instrument for catching or killing salmon, trout or char:
- (3) Have in his possession a light or any of the foregoing instruments under such circumstances as to satisfy the court before whom he is tried that he intended at the time to catch or kill salmon, trout or char by means thereof.

And any person acting in contravention of the section shall incur the following penalties:—

- (1) For the first offence not exceeding 5*l*.:
- (2) For the second offence not less than 2*l*. 10*s*. and not exceeding 5*l*.:
- (3) For a third offence of not less than 5*l*., or, at the discretion of the court before whom he is tried, imprisonment with or without hard labour, for any period not less than one month nor more than six months;

And on each conviction forfeiture of any instruments used by him or found in his possession in contravention of the above provision.

But this provision does not apply to any person using a gaff

(*t*) 24 & 25 Vict. c. 109, s. 8.

(*u*) 28 & 29 Vict. c. 121, s. 65.

(*x*) 36 & 37 Vict. c. 71, s. 18.

(*y*) Sect. 4.

as auxiliary to angling with a rod and line (y) at such times as shall be authorized by byelaw by the board of conservators of the district in which he is fishing, but if a gaff is used as auxiliary to angling with a rod and line at any other times the person using the same will be liable to the following penalties:—

- (1) For a first offence to a penalty not exceeding 5*l.*:
- (2) For a second offence of not less than 2*l.* 10*s.* and not exceeding 5*l.*:
- (3) For a third offence of not less than 5*l.* (z).

No person shall do the following things or any of them; that is to say (a),

Penalty on using roe as a bait.

- (1) Use any fish roe for the purpose of fishing:
- (2) Buy, sell, or expose for sale, or have in his possession, any salmon, trout or char roe.

And any person acting in contravention of this section shall incur the following penalties:—

- (1) For the first offence a penalty not exceeding 5*l.*:
- (2) For the second offence of not less than 2*l.* 10*s.* and not exceeding 5*l.*:
- (3) For the third offence of not less than 5*l.*

And shall forfeit all salmon, trout or char roe found in his possession; but this section shall not apply to any person who uses or has in his possession salmon, trout or char roe for artificial propagation or other scientific purposes, with the consent in writing of the board of conservators of the district when the salmon, trout or char from which such roe was taken were caught, or gives reasons satisfactory to the court before whom he is tried for having the same in his possession.

Except in such districts as the board of conservators have by any byelaw determined the minimum size of the mesh of nets for catching salmon within their district, no person shall take or attempt to take salmon with any net having a mesh of less dimensions than two inches in extension from knot to knot (the measurement to be made on each side of the square), or eight inches measured round each mesh when wet; and any person acting in contravention of this section shall forfeit all nets

Penalty on using certain nets.

(y) 24 & 25 Vict. c. 109, s. 8.

(z) 36 & 37 Vict. c. 71, s. 89.

(a) 24 & 25 Vict. c. 109, s. 9.

and tackle used by him in so doing, and shall for each offence incur the following penalties (*b*):—

- (1) For the first offence not exceeding 5*l*.:
- (2) For the second offence not less than 2*l*. 10*s*. and not exceeding 5*l*.:
- (3) For the third offence of not less than 5*l*.

And on a second and every subsequent conviction shall, if a licensee, forfeit his licence.

And the placing two or more nets behind or near to each other in such manner as to practically diminish the mesh of the nets used, or the covering the nets used with canvas, or the using any other artifice so as to evade the provisions of the Salmon Fishery Acts with respect to the mesh of nets, shall be deemed to be an act in contravention of the Salmon Fishery Acts (*b*).

The conservators may by byelaw determine the minimum size of the mesh of nets for catching salmon that shall be lawfully used within their district, so that such mesh shall not be less than one and a-half inch from knot to knot, and so that no person shall be compelled to use a mesh larger than two and a-half inches from knot to knot measured when wet (*c*).

No draft net to be shot within 100 yards of another until the latter is landed.

Any person who shall shoot or work any seine or draft net for salmon in a river across the whole width or more than three-fourths of the width thereof, within one hundred yards from the nearest point of the line of shot of any other seine or draft net worked in like manner, and already shot or being worked in such river, before such last-mentioned net is fully drawn in and landed, shall for every such offence be liable to a penalty not exceeding five pounds (*d*).

Fishing at mills and weirs.

No person shall catch or kill, or attempt to catch or kill, except with rod and line, or scare or disturb, or attempt to scare or disturb, any salmon within fifty yards above or one hundred yards below any weir, dam, or artificial obstruction which hinders or retards the passage of salmon, or in any waters under or appurtenant to any mill, or in the head race or tail race of any mill, or in any waste race or pool communicating with such mill race, or in any artificial channel connected with such weir or obstruction; and no person shall fish with rod and line in such a

(*b*) 24 & 25 Vict. c. 109, s. 10.

(*c*) 36 & 37 Vict. c. 71, s. 39.

(*d*) Sect. 14.

manner, or such a place, near such weir or obstruction, as to wilfully scare or hinder salmon from passing through any fish pass, or over any part of such weir or obstruction usually available to salmon for the purposes of a passage, except such dam or artificial obstruction has or shall have attached thereto a fish pass of such form and dimensions as may be approved by the Home Office in pursuance of the twelfth section of the Salmon Fishery Act, 1861, and such fish pass has constantly running through it such a flow of water as will enable salmon to pass up and down it, and compensation has not been made by the conservators of the district to the persons entitled to fish in such waters for such right of fishery, such compensation to be settled in case of dispute in manner in which disputed compensation as to lands is directed to be settled under the Lands Clauses Consolidation Acts.

And if any person acts in contravention of this provision he shall incur the following penalties:—

- (1) Forfeiture of all boxes, baskets, nets, rods, implements, or devices used or placed for catching salmon;
- (2) Of all salmon caught;
- (3) On a second and every subsequent conviction, if a licensee, his licence;
- (4) A penalty not exceeding 5*l.* and 1*l.* for each salmon caught for the first offence;
- (5) For the second offence of not less than 2*l.* 10*s.* and not exceeding 5*l.*, and 1*l.* for each salmon caught;
- (6) For a third offence of not less than 5*l.* and not exceeding 5*l.*, and 1*l.* for each salmon caught;
- (7) For a fourth and every subsequent offence of not less than 5*l.* and 1*l.* for each salmon caught:

Provided that nothing in this section shall be deemed to apply to any legal fishing mill-dam not having a crib, box or cruipe, or to any fishing box, coop, apparatus, net, or mode of fishing in connexion with and forming part of such weir or obstruction for purposes of fishing (e).

Any person doing any act for the purpose of preventing salmon from passing through any fish pass, or taking any salmon in its passage through the same, shall incur a penalty not ex-

Taking
salmon in
fish passes.

ceeding 5*l.* for the first offence, nor less than 2*l.* 10*s.* and not exceeding 5*l.* for a second offence, and not less than 5*l.* for a third offence, and shall in each case forfeit all salmon taken by him in contravention of this section and any instrument used by him in taking the same; and on a second and every subsequent conviction, if a licensee, he shall forfeit his licence (*f*).

No eel baskets to be fixed between 1st January and the 24th day of June.

No person, between the first day of January and the twenty-fourth day of June inclusive, shall hang, fix, or use in any salmon river any baskets, nets, traps, or devices for catching eels or the fry of eels, or place in any inland water any device whatsoever to catch or obstruct any fish descending the stream; or shall at any time place upon the apron of any weir any basket, trap, or device for taking fish, except wheels or leaps for taking lampreys between the first day of August and the first day of March; and any person acting in contravention of this section shall incur the following penalties:—

- (1) For a first offence a penalty not exceeding 2*l.* for every day during which he suffers such engines to be fixed or used:
- (2) For a second offence a penalty not less in the whole than 2*l.* 10*s.* and not exceeding 2*l.* a day:
- (3) For a third offence a penalty not less in the whole than 5*l.* and not exceeding 5*l.* a day:
- (4) For a fourth offence a penalty of not less than 2*l.* a day.

But nothing herein contained shall extend to prohibit the use of eel baskets not exceeding in any part ten inches in diameter constructed so as to be fished with bait, and not used at any dam or weir (*g*).

SECT. 2.—FIXED ENGINES.

Penalty on placing fixed engines.

No fixed engine of any description, that is to say, no stake net, bag-net, putt, putcher, fixed implement, or engine for catching or for facilitating the catching of fish; no net or other implements for taking fish fixed to the soil or made stationary in any other way not being a fishing weir or fishing mill-dam; no nets placed or suspended in any inland or tidal waters unattended by the owner or any person duly authorized by the

(*f*) 24 & 25 Vict. c. 109, s. 23.
(*g*) 36 & 37 Vict. c. 71, s. 15.

owner to use the same for catching salmon, and all engines, devices, machines, or contrivances, whether floating or otherwise, for placing or suspending such nets or maintaining them in working order or making them stationary, shall be placed or used for catching or for the purpose of facilitating the capture of salmon, or detaining or obstructing the free passage of salmon in any inland or tidal waters; and any engine placed or used in contravention of the Salmon Fishery Act may be taken possession of or destroyed; and any engine so placed or used, and any salmon taken by such engine, shall be forfeited, and in addition thereto, the owner of any engine placed or used in contravention of this section shall, for each day of so placing or using the same, incur the following penalties:—

- (1) For a first offence a penalty not exceeding 10*l*;
- (2) For a second offence a penalty not less than 2*l*. 10*s*. and not exceeding 10*l*;
- (3) For a third offence a penalty not less than 5*l*. and not exceeding 10*l*;
- (4) For a fourth and every subsequent offence a penalty not less than 10*l*.

And for the purposes of this provision a net that is secured by anchors or otherwise temporarily fixed to the soil shall be deemed to be a fixed engine. But this shall not affect any ancient right or mode of fishing lawfully exercised during the open season of any one of the years 1857, 1858, 1859, 1860, 1861; so, nevertheless, that no person shall by proving the use of different fixed engines during the said years be allowed to be entitled to a number of privileged engines exceeding the greatest number of such engines in use by him during some one of the years 1857, 1858, 1859, 1860, 1861, by virtue of any grant, charter or immemorial usage: provided always that nothing herein contained shall be deemed to apply to fishing weirs or fishing mill-dams (A).

SECT. 3.—FISHING WEIR.

Fishing weir shall mean any erection, structure or obstruction fixed to the soil either temporarily or permanently across or

Definition of
a fishing
weir.

(A) 24 & 25 Vict. c. 109, s. 11; 28 & 29 Vict. c. 121, s. 39; 36 & 37 Vict. c. 71, s. 4.

partly across a branch of a river, and which is used for the exclusive purpose of catching or facilitating the catching of fish (A).

Prohibition
of the use of
fishing weirs.

The following regulations shall be observed with respect to dams :—

No dam except such fishing weirs as were lawfully in use on the 6th day of August, 1861, by virtue of a grant or charter or immemorial usage, shall be used for the purpose of catching or facilitating the catching of salmon.

1. Any person catching or attempting to catch salmon in contravention of this provision shall incur the following penalties :—

For a first offence of not less than 5*l.* and not exceeding 1*l.* for each salmon which he catches:

For a second offence of not less in the whole than 2*l.* 10*s.* and not exceeding 5*l.*, and 1*l.* for each salmon which he catches :

For a third offence of not less than 5*l.* in the whole and not exceeding 5*l.*, and 1*l.* for each salmon which he catches:

For a fourth offence of not less than 5*l.*, and 1*l.* for each salmon which he catches:

And on a second and every subsequent offence shall, if a licensee, forfeit his licence.

2. All traps, nets and contrivances used in or in connexion with the dam for the purpose of catching salmon shall be forfeited.
3. All salmon caught in contravention of the above prohibition shall be forfeited.

And no fishing weir, although lawfully in use as aforesaid, shall be used for the purposes of catching salmon, unless it have therein such free gap as is mentioned in the Salmon Fishery Act, 1861 (i).

Construction
of free gaps.

Where any fishing weir extends more than halfway across any stream at its lowest state of water, it shall have a free gap or opening in accordance with the regulations following, unless

(A) 36 & 37 Vict. c. 71, s. 4.

(i) 24 & 25 Vict. c. 109, s. 12.

otherwise authorized by the home office, under the powers of this act; that is to say,

- (1) The free gap shall be situate in the deepest part of the stream between the points where it is intercepted by the weir:
- (2) The sides of the gap shall be in a line with and parallel to the direction of the stream at the weir:
- (3) The bottom of the gap shall be level with the natural bed of the stream above and below the gap:
- (4) The width of the gap in its narrowest part shall be not less than one-tenth part of the width of the stream; provided always, that such gap shall not be required to be wider than forty feet, and shall not in any case be narrower than three feet (*℥*).

The following rules shall be observed for the purpose of enforcing efficient free gaps in fishing weirs; that is to say, Enforcing
free gaps in
fishing weirs.

- (1) Where a weir is without a legal free gap on the 6th of August, 1861, the owner of such weir shall within twelve months after that date make such a gap, and if he does not he shall incur a penalty on a first conviction of not exceeding 5*ℓ*. for every day after the expiration of such twelve months; on a second conviction of not less than 2*ℓ*. 10*s*. and not exceeding 5*ℓ*. for any day after the expiration of such twelve months; on a third offence of not less than 5*ℓ*. and not exceeding 5*ℓ*. a day for every such day; and for a fourth offence of not less than 5*ℓ*. a day for every day after the expiration of such period of twelve months during which he does not make such gap:
- (2) Where a free gap has been made in a weir, but the same is not maintained in accordance with the Salmon Fishery Act, 1861, the owner of such weir shall incur a penalty on a first conviction not exceeding 1*ℓ*. a day for each day he is in default; on a second conviction not less than 2*ℓ*. 10*s*. in the whole and not exceeding 1*ℓ*. a day for each such day; for a third offence of not less than 5*ℓ*., and not exceeding 5*ℓ*. for each such day; and for a fourth offence of not less than 1*ℓ*. a day for each day he is in default:

- (3) No alteration shall be made in the bed of any river in such manner as to reduce the flow of water through a free gap; if it is, the person making the same shall incur a penalty on a first conviction of not exceeding 5*l.* and a further penalty of 1*l.* a day until he restores the bed of the river to its original state; on a second conviction not less in the whole than 2*l.* 10*s.* and not exceeding 5*l.*, and 1*l.* a day; for a third offence not less in the whole than 5*l.*, and not exceeding 5*l.* and 1*l.* a day; for a fourth offence not less than 5*l.*, and a further penalty of 1*l.* a day until he restores the bed of the river to its original state.
- (4) No person shall place any obstruction, use any contrivance, or do any act whereby fish may be scared, deterred, or in any way prevented from freely entering and passing up and down a free gap at all periods of the year; and any person placing any obstruction, using any contrivance, or doing any act in contravention of the regulation lastly herein-before contained shall incur a penalty not exceeding 5*l.* for a first offence and not less than 2*l.* 10*s.*, and not exceeding 10*l.* for a second offence nor less than 5*l.*, and not exceeding 10*l.* for a third offence, and not less than 10*l.* for a fourth offence.

But this last regulation shall not apply to a temporary bridge or board used for crossing the free gap, and taken away immediately when a person has crossed the same (1).

Construction
of boxes and
cribs in fish-
ing weirs.

The following rules shall be observed in relation to the construction of boxes and cribs in fishing weirs; that is to say,

- (1) The upper surface of the sill shall be level with the bed of the river:
- (2) The bars or inscales of the heck or upstream side of the box or crib shall not be nearer each other than two inches, and shall be capable of being removed and shall be placed perpendicularly.

And the owner of any fishing weir that has attached thereto any box or crib in contravention of this act shall bring the same into conformity with this act within six months after the

(1) 24 & 25 Vict. c. 109, s. 28.

6th August, 1861; and he shall incur a penalty for a first offence not exceeding 5*l.* for every day after the expiration of such period of six months during which he fails to comply with the provisions of this section, for a second offence of not less in the whole than 2*l.* 10*s.* and not exceeding 5*l.* a day, for a third offence of not less than 5*l.* in the whole and not exceeding 5*l.* a day, for a fourth and every subsequent offence of not less than 5*l.* a day; and any owner failing so to maintain the same shall incur a penalty for a first offence not exceeding 1*l.* for every day during which such failure continues, for a second of not less than 2*l.* 10*s.* and not exceeding 1*l.* for every day during which such failure continues, for a third offence of not less in the whole than 5*l.* and not exceeding 1*l.* for every day during which such failure continues, for a fourth offence of not less than 1*l.* a day for every day during which such failure continues (m).

There shall not be attached to any box or crib in any fishing weir any spur or tail wall, leader or outrigger of a greater length than twenty feet from the upper or lower side of such box or crib; and if any box or crib in any fishing weir has any walls, leaders or outriggers in contravention of this provision, the owner of the weir or fishing mill-dam shall incur a penalty for a first offence not exceeding 1*l.* for every day during the continuance thereof, for a second offence of not less in the whole than 2*l.* 10*s.* and not exceeding 1*l.* a day, for a third offence of not less in the whole than 5*l.* and not exceeding 1*l.* a day, and for a fourth offence of not less than 1*l.* a day for every day during the continuance thereof.

Construction
of spur walls
in fishing
weirs.

SECT. 4.—FISHING MILL-DAMS.

Fishing mill-dam shall mean a dam used or intended to be used partly for the purpose of catching or facilitating the catching of fish, and partly for the purpose of supplying water for milling or other purposes (n).

Definition of
a fishing mill-
dam.

The following regulations shall be observed with respect to dams:—

Penalty on
using certain
dams for
catching
salmon.

- (1) No dam except such fishing mill-dams as are lawfully in

(m) 24 & 25 Vict. c. 109, s. 29.

(n) Sect. 4.

- (3) No alteration shall be made in the bed of any river in such manner as to reduce the flow of water through a free gap; if it is, the person making the same shall incur a penalty on a first conviction of not exceeding 5*l.* and a further penalty of 1*l.* a day until he restores the bed of the river to its original state; on a second conviction not less in the whole than 2*l.* 10*s.* and not exceeding 5*l.*, and 1*l.* a day; for a third offence not less in the whole than 5*l.*, and not exceeding 5*l.* and 1*l.* a day; for a fourth offence not less than 5*l.*, and a further penalty of 1*l.* a day until he restores the bed of the river to its original state.
- (4) No person shall place any obstruction, use any contrivance, or do any act whereby fish may be scared, deterred, or in any way prevented from freely entering and passing up and down a free gap at all periods of the year; and any person placing any obstruction, using any contrivance, or doing any act in contravention of the regulation lastly herein-before contained shall incur a penalty not exceeding 5*l.* for a first offence and not less than 2*l.* 10*s.*, and not exceeding 10*l.* for a second offence nor less than 5*l.*, and not exceeding 10*l.* for a third offence, and not less than 10*l.* for a fourth offence.

But this last regulation shall not apply to a temporary bridge or board used for crossing the free gap, and taken away immediately when a person has crossed the same (*l*).

Construction
of boxes and
cribs in fish-
ing weirs.

The following rules shall be observed in relation to the construction of boxes and cribs in fishing weirs; that is to say,

- (1) The upper surface of the sill shall be level with the bed of the river:
- (2) The bars or inscales of the heck or upstream side of the box or crib shall not be nearer each other than two inches, and shall be capable of being removed and shall be placed perpendicularly.

And the owner of any fishing weir that has attached thereto any box or crib in contravention of this act shall bring the same into conformity with this act within six months after the

And the owner of any fishing mill-dam that has attached thereto any box or crib in contravention of the Salmon Fishery Act, 1861, shall bring the same into conformity with it within six months after the 1st October, 1861, and he shall incur, for a first offence, a penalty not exceeding 5*l.* a day for every day after the expiration of six months during which he fails to comply with the provisions of this section, for a second offence of not less than 2*l.* 10*s.* in the whole and not exceeding 5*l.* a day, for a third offence of not less than 5*l.* in the whole and not exceeding 5*l.* a day, for a fourth and every subsequent offence of not less than 5*l.* a day. And any owner failing so to maintain the same shall incur, on a first offence, a penalty not exceeding 1*l.* for every day during which such failure continues, for a second offence of not less than 2*l.* 10*s.* in the whole, and not exceeding 1*l.* for every such day, for a third offence of not less than 5*l.* in the whole and 1*l.* for every such day, for a fourth offence of not less than 1*l.* for every day during which such failure continues (*p*).

There shall not be attached to any box or crib in any fishing mill-dam any spur or tail wall, leader or outrigger of a greater length than twenty feet from the upper or lower side of such box or crib; and if any box or crib in any fishing mill-dam has any walls, leaders or outriggers in contravention of this provision the owner of the fishing mill-dam shall incur a penalty for a first offence not exceeding 1*l.* for every day during the continuance thereof; for a second offence of not less than 2*l.* 10*s.* in the whole and not exceeding 1*l.* a day; for a third offence of not less than 5*l.* in the whole and not exceeding 1*l.* a day; and for the fourth and every subsequent offence of not less than 1*l.* a day for every day during the continuance thereof (*q*).

In any case where the special commissioners for English fisheries have decided that any fishing mill-dam, box, crib or cruive is illegal only by reason of its not having a fish pass attached thereto as required by law, if the owner thereof enters into an undertaking to erect and maintain at his own expense a fish pass in accordance with the provisions of the twelfth section of the Salmon Fishery Act, 1861, before the first day of January, one

Construction of spur walls in fishing mill-dams.

Provisions as to legal weir not provided with fish passes.

(*p*) 24 & 25 Vict. c. 109, s. 29.

(*q*) Sect. 30.

thousand eight hundred and seventy-five, it shall be lawful for such person to use, from and after the erection of such fish pass, the said fishing mill-dam, box, crib or cruive for taking salmon, any provision in the Salmon Fishery Act, 1865, to the contrary notwithstanding: provided, nevertheless, that in the event of the owner of such fishing mill-dam, box, crib or cruive not making such fish pass within the time above mentioned, his right of fishing or using such fishing mill-dam, box, crib or cruive for the purpose of taking fish shall henceforth cease, and be for ever forfeited and lost, and the board of conservators for the district in which such fishing mill-dam, box, crib or cruive is situated shall thereupon give notice to such owner to remove all or any cages, cribs, traps, boxes, cruives, or other contrivances for catching salmon within six calendar months after the service of such notice; and in the event of his non-compliance with such notice, the board aforesaid shall have power to remove the same and all other obstructions to the free passage of the fish.



SECT. 5.—PROHIBITION OF KILLING CERTAIN KINDS OF FISH.

Penalty on
taking un-
clean fish.

No person shall do any of the following things; that is to say,

- (1) Wilfully take, kill or injure, or attempt to take, any unclean or unseasonable salmon, trout or char:
- (2) Buy, sell, or expose for sale, or have in his possession, any unclean or unseasonable salmon, trout or char, or any part thereof.

And any person acting in contravention of this section shall incur the following penalties; that is to say,

- (1) He shall forfeit any fish taken, bought, sold, or exposed for sale, or in his possession:
- (2) He shall incur a penalty for a first offence not exceeding 5*l.*, and a further penalty not exceeding 1*l.* in respect of each fish taken, sold or exposed for sale, or in his possession; for a second offence of not less than 2*l.* 10*s.* in the whole and not exceeding 5*l.*, and 1*l.* in respect of each such fish; for a third offence of not less than 5*l.* and not exceeding 5*l.*, and 1*l.* in respect of each

such fish, or, at the discretion of the court, imprisonment, with or without hard labour, for any term not less than one month and not exceeding six months; and for a fourth offence of not less than 5*l.*, and 1*l.* in respect of each such fish; and if a licensee, on a second and every subsequent conviction, forfeiture of licence.

But this section shall not apply—

- (1) To any person who takes such fish accidentally, and forthwith returns the same to the water with the least possible injury:
- (2) To any person who takes or is in possession of such fish for artificial propagation or other scientific purposes; provided that if within a district where a board of conservators is established the consent of the board has been given in writing to such taking or possession of unclean or unseasonable salmon (*r*).

No person shall do the following things or any of them; that is to say,

Penalty on taking the young of salmon.

- (1) Wilfully take or destroy the young of salmon:
- (2) Buy, sell, or expose for sale, or have in his possession, the young of salmon:
- (3) Place any device for the purpose of obstructing the passage of the young of salmon:
- (4) Wilfully injure the young of salmon:
- (5) Wilfully disturb any spawning bed, or any bank or shallow on which the spawn of salmon may be.

And any person acting in contravention of this section shall incur the following penalties; that is to say,

- (1) He shall forfeit all the young of salmon found in his possession:
- (2) He shall forfeit all rods, lines, nets, devices, and instruments used in committing any of the above offences:
- (3) He shall for the first offence pay a penalty not exceeding 5*l.*; for the second offence of not less than 2*l.* 10*s.* and not exceeding 5*l.*; for the third and every subsequent offence not less than 5*l.*

But nothing herein contained shall apply to any person who may have obtained such young of salmon for artificial propagation or

(*r*) 24 & 25 Vict. c. 109, s. 14; 28 & 29 Vict. c. 121, ss. 60, 64; 36 & 37 Vict. c. 71, s. 18.

other scientific purposes, if within a district where a board of conservators is established the consent of the board has been obtained in writing to the taking and having in possession such young of salmon, and nothing herein contained shall prejudice the legal right of any owner to take materials from any stream (*s*).

Penalty on disturbing fish when spawning.

If any person wilfully disturbs or attempts to catch salmon when spawning, or when on or near their spawning beds, he shall for the first offence incur a penalty not exceeding 5*l*., for the second offence of not less than 2*l*. 10*s*. and not exceeding 5*l*., for the third offence of not less than 5*l*.; but this section shall not apply to any person who may catch or attempt to catch salmon for the purposes of artificial propagation or other scientific purposes, if in a fishing district with the consent in writing of the board of conservators for that district (*t*).

SECT. 6.—POLLUTION.

Penalty on mixing poisonous substances in rivers.

Every person who causes or knowingly permits to flow, or puts or knowingly permits to be put, into any waters containing salmon, or into any tributaries thereof, any liquid or solid matter to such an extent as to cause the water to poison or kill fish, shall incur the following penalties (that is to say):—

- (1) Upon the first conviction a penalty not exceeding 5*l*.:
- (2) Upon the second conviction a penalty not less than 2*l*. 10*s*. in all and not exceeding 10*l*., and a further penalty not less than 1*l*. and not exceeding 2*l*. for every day during which such offence is continued:
- (3) Upon the third conviction a penalty of not less than 5*l*. in all and not exceeding 20*l*. a day for every day during which such offence is continued, commencing from the date of the third conviction:
- (4) Upon a fourth or any subsequent conviction of not less than 20*l*. a day for every such day.

But no person shall be subject to the foregoing penalties for any act done in the exercise of any right to which he is by law entitled, if he prove to the satisfaction of the court before whom he is tried that he has used the best practicable means, within a

(*s*) 24 & 25 Vict. c. 109, s. 15.

(*t*) Sect. 16.

reasonable cost, to render harmless the liquid or solid matter so permitted to flow or to be put into waters; but nothing herein contained shall prevent any person from acquiring a legal right in cases where he would have acquired it if the Salmon Fishery Act, 1861, had not passed, or exempt any person from any punishment to which he would otherwise be subject, or legalize any act or default that would but for the Salmon Fishery Act, 1861, be deemed to be a nuisance or otherwise be contrary to law (u).

Where any proceedings are instituted by any complainant against any person for the recovery of any penalties alleged to have been incurred by him under the 5th section of the Salmon Fishery Act, 1861, if such person, hereinafter referred to as "the defendant," on appearing before the justices constituting the court by which he is to be tried in pursuance of the Salmon Fishery Act, 1861, alleges, by way of defence, that he has used the best practicable means, within a reasonable cost, to render such matter harmless, and proves to the satisfaction of the court that in the event of the complaint being decided against him the expense of permanently preventing the matter complained of would, exclusive of costs, exceed 100*l.*, and gives security, to be approved by such court, duly to prosecute his appeal and to abide the event thereof, all proceedings before the justices shall be stayed, and it shall be lawful for such complainant to bring an action in one of her Majesty's superior courts of law at Westminster against the defendant; and the plaintiff in such action shall deliver to the defendant an issue or issues whereby the question whether he has used the best practicable means, within a reasonable cost, to render such matter harmless may be tried; and the form of such issue or issues, in case of dispute, or in the case of non-appearance of the defendant, shall be settled by the court in which the action is brought, and such action shall be prosecuted and issue or issues tried in the same manner and subject to the same incidents in and subject to which actions are prosecuted and issues tried in other cases within the jurisdiction of such court, or as near thereto as circumstances admit (x).

The verdict of the jury on such issue shall, unless the court before which the same is tried orders a new trial, be conclusive

Power to have question under preceding section decided by jury.

Effect of issue.

(u) 24 & 25 Vict. c. 109, s. 5.

(x) Sect. 6.

as to the questions involved in any subsequent proceedings that may be had for the recovery of any penalties in pursuance of the said Salmon Fishery Act, 1861, and any costs that may have been incurred before the justices by the parties to such action shall be deemed to be costs incurred in such action, and be payable accordingly (y).

Extension of
"The Ma-
licious In-
juries Act."

The provisions of the thirty-second section of the "Malicious Injuries to Property Act" (z), so far as they relate to poisoning any water with intent to kill or destroy fish, shall be extended and apply to salmon rivers, as if the words "or in any salmon river" were inserted in the said section in lieu of the words "private rights of fishery" after the words "noxious material in any such pond or water" (a).

For the provisions of the Gas Clauses Consolidation Act (b) as to pollutions by gas, see Appendix.

(y) 24 & 25 Vict. c. 109, s. 7.

(z) See Appendix.

(a) 36 & 37 Vict. c. 71, s. 13.

(b) 10 Vict. c. 15.

CHAPTER XI.

CENTRAL AUTHORITY.

THE central authority over all the salmon fisheries in England and Wales is the Secretary of State for the Home Department (*a*); it is his duty to approve all fish passes, bye-laws, licence duty, and do all superintending work that the Salmon Fishery Acts, 1861 to 1873, require to be done.

Central
control of
fisheries
vested in
Home Office.

The chief of the acts he is required to do are—

Acts to be
done by
Secretary of
State.

1. To approve of fish passes for fishing mill-dams.
2. To authorize boards of conservators or the proprietors of fisheries to attach fish passes of approved form and dimensions to weirs in existence on the 6th August, 1861.
3. To make regulations as to fishing weirs.
4. To form and define fishery districts.
5. To alter fishery districts.
6. To consent to boards of conservators mortgaging their licence duties.
7. To approve of the scale of licence duties.
8. To consent to the imposition of additional licence duty.
9. To consent to the variation of licence duty.

(*a*) 24 & 25 Vict. c. 109, s. 31.

10. To approve of alterations in existing fish passes.
11. To consent to the variation of the number of members of boards of conservators.
12. To approve bye-laws.
13. To sanction compulsory purchase of weirs by boards of conservators.
14. To sanction compulsory purchase of land for fish passes.
15. To approve of the placing of gratings and the widening of channels.

Inspectors of
fisheries to
be appointed.

The Salmon Fishery Act, 1861, which vested the general superintendence of the salmon fisheries of England in the Home Office, authorized the appointment of two inspectors of fisheries, and empowered the Home Secretary to assign them their duties, and pay them such salaries as the commissioners of the treasury should from time to time determine (*b*).

The inspectors were originally appointed for three years, but their appointment has been continued from time to time by various acts of parliament, the last continuance act being passed in 1872.

The Home Office is empowered to remove the inspectors from time to time, and appoint others in their places (*b*).

Reports of
inspectors.

The Salmon Fishery Act, 1861, requires the Home Office annually to lay before parliament reports from the inspectors, containing as far as

(*b*) 24 & 25 Vict. c. 109, s. 31.

practicable a statistical account of the fisheries, with such other information as they can collect, and any suggestions they may have to offer for their improvement (*c*).

In order to enable them to do this, the Salmon Returns. Fishery Act, 1873, provides that the clerk of each board of conservators shall, once a year, forward to the Home Office before such date as the secretary of state may fix, an annual return in such form, and made up to such date as he shall appoint, and containing such information as he may require. And any clerk refusing or neglecting to make such return is liable to a penalty of 1*l.* (*d*).

In order to try the legality of the various fishing weirs, fishing mill-dams and fixed engines for catching or facilitating the capture of salmon throughout England and Wales, the Salmon Fishery Act, 1865 (*e*), empowered the Queen, by warrant under the royal sign manual, to appoint three persons, one of whom was to be a barrister of not less than seven years' standing at the bar, to be commissioners for that purpose (*f*). The commissioners inquired into the legality of most of the fishing weirs, fishing mill-dams and fixed engines throughout the country. Some few, notably those belonging to the crown, remained in different places to be inquired into; but in the begin-

Special commission for English fishing.

(*c*) 24 & 25 Vict. c. 109, s. 32.

(*d*) 36 & 37 Vict. c. 71, s. 63.

(*e*) 28 & 29 Vict. c. 121, ss. 40—55.

(*f*) Sect. 46.

ning of the year 1873 an act of parliament was passed discontinuing the special commissioners, and providing that no further appointments should be made under the Salmon Fishery Act, 1865 (*e*).

The sections of the act giving jurisdiction to, and the regulations for procedure before the special commissioners, have never been repealed; but as they are now of no practical importance it will only be necessary to print them without any comment on their provisions.

Statutes relating to Central Authority.

Definition of
Home Office
and Secretary
of State.

Home office shall mean one of her Majesty's principal secretaries of state (*f*).

Secretary of state shall mean one of her Majesty's principal secretaries of state (*g*).

General
superinten-
dence of
fisheries by
Home Office.

The general superintendence of the salmon fisheries throughout England shall be vested in the home office, and it shall be lawful for the home office to appoint two inspectors of fisheries for three years, to assign to them their duties, and to pay to them such salaries as may from time to time be determined by the commissioners of her Majesty's treasury (*h*).

The home office may from time to time remove the said inspectors, and appoint other persons in their stead (*h*).

Annual
reports of
inspectors to
be laid before
parliament.

The home office shall annually lay before parliament reports from the inspectors, which reports shall contain as far as may be practicable a statistical account of the fisheries, with such other information as may be collected, and suggestions offered for their regulation and improvement (*i*).

Returns.

The clerk, secretary, or other officer where there is no clerk, of every board of conservators shall prepare and forward to the home office, before such date as the secretary of state shall from time

(*e*) 36 Vict. c. 13.

(*f*) 24 & 25 Vict. c. 109, s. 4.

(*g*) 36 & 37 Vict. c. 71, s. 4.

(*h*) 24 & 25 Vict. c. 109, s. 31.

(*i*) Sect. 32.

to time appoint, an annual return in such form and made up to such date as the secretary of state shall from time to time appoint. Such return shall contain such information as the said secretary of state shall from time to time require; and any such person refusing or neglecting to make such return shall be liable to a penalty of not exceeding 1*l*. for the first, and not less than 1*l*. for every subsequent refusal or neglect (*k*).

Her Majesty may, by warrant under the royal sign manual, appoint any number of persons not exceeding three, of whom one shall be a barrister of not less than seven years' standing at the bar, to be commissioners under the Salmon Fishery Act, 1865, during her Majesty's pleasure, and upon every vacancy in the office of any commissioner by death, resignation, or incapacity to act may appoint some other fit person to fill the vacancy: provided always, that in the case of a vacancy by the death, resignation, or incapacity of the commissioner required by this act to be a barrister, another barrister qualified as aforesaid be appointed in his place (*l*).

Appointment of commissioners under sign manual.

The commissioners appointed under the Salmon Fishery Act, 1865, shall be styled "the special commissioners for English fisheries;" they shall cause to be made for their commission such seal or seals as they may require; and any summons, order, warrant, or other instrument or copy thereof, purporting to be sealed with the seal of the commissioners, and to be signed as herein-after mentioned, shall be received in evidence without any further proof (*m*).

Commissioners to have a common seal.

No commissioner shall during his continuance in office be capable of being elected or of sitting as a member of the house of commons (*n*).

Commissioners not to sit in parliament.

The commissioners of her Majesty's treasury may from time to time fix such salaries as they may think fit for the commissioners hereby appointed, and also appoint such additional officers, clerks, and servants at such salaries as the said commissioners of the treasury may think proper and necessary, and from time to time dismiss such officers, clerks, and servants, and appoint others in their place (*o*).

The treasury to fix salaries, &c. and appoint additional officers.

(*k*) 36 & 37 Vict. c. 71, s. 63.

(*l*) 28 & 29 Vict. c. 121, s. 46.

(*m*) Sect. 47.

(*n*) Sect. 48.

(*o*) Sect. 50.

Duration of
office of com-
missioners.

The offices of the said commissioners, and all powers, rights, and privileges pertaining thereto, shall continue in force for two years, and from thenceforth until the end of the next session of parliament (n).

Commis-
sioners to
inquire as to
fixed engines.

Subject to such appeal as is hereinafter mentioned, the commissioners may inquire into the legality of all fixed engines erected or used for catching salmon within the limits of the Salmon Fishery Acts, 1861 and 1865, and abate and remove all such as are not proved to their satisfaction to be privileged (o).

Certificate as
to privileged
engines.

Where a claim is made by any person on behalf of a fixed engine that it is privileged, the commissioners shall, on proof being given to their satisfaction that such engine is privileged, certify to that effect, stating in the certificate the situation, size, and description of the engine. A certificate given in pursuance of this section shall be deemed to be an order of the commissioners, and to be subject to appeal as such. If unappealed from, or as confirmed or amended on appeal, such certificate shall be conclusive evidence that the engine is a privileged engine within the meaning of the Salmon Fishery Acts, 1861 and 1865, but the certificate shall not render any engine legal that would be otherwise illegal by reason of its being injurious to navigation (p).

Commis-
sioners to
inquire as to
fishing weirs.

Subject to such appeal as is hereinafter mentioned, the commissioners may inquire into the legality of all fishing weirs and fishing mill-dams throughout the limits of the Salmon Fishery Acts, 1861 and 1865, and shall remove such fishing weirs, and cause to be rendered incapable of catching fish such fishing mill-dams as are in contravention of the Salmon Fishery Act, 1861; provided that where a fishing weir is illegal only by reason of its not having a free gap as required by law, or a fishing mill-dam is illegal only by reason of its not having a fish pass attached thereto as required by law, this section shall not empower the commissioners to remove such fishing weir if an undertaking be entered into, to the satisfaction of the commissioners, by the owner or other person interested in such weir, to make a legal free gap therein within a reasonable time to be prescribed by the commissioners, and a free gap is made accordingly, or to cause to be rendered incapable of catching fish such fishing mill-dam if a

(n) 28 & 29 Vict. c. 121, s. 51.

(o) Sect. 40.

(p) Sect. 41.

like undertaking be entered into to attach a fish pass thereto, as required by law, within a reasonable time to be prescribed by the commissioners, and such fish pass be attached accordingly (g).

The commissioners shall advertise in some daily morning London newspaper, and in some newspaper circulating in the district in which any salmon river or part of a river is situate, notice of the place where and time when they will be prepared to hold a court for determining the legality of all fishing weirs, fishing mill-dams, and fixed engines on that river or part of a river.

Notices of
courts of com-
missioners.

The advertisement in the said newspapers shall be inserted at least twenty-eight days before the time at which any court mentioned therein is appointed to be held. The commissioners may alter any place or time mentioned in such advertisements, on giving notice of such alteration in such manner as the commissioners may think best calculated to insure to the parties interested knowledge of such alteration. The above-mentioned advertisement shall be in the form marked A. in the second schedule to the Salmon Fishery Act, 1865, or as near thereto as circumstances admit. In addition to the foregoing advertisements, the commissioners, at least fourteen clear days before entering upon an inquiry as to the legality of any fishing weir, fishing mill-dam, or fixed engine, shall serve a notice on the owner or one of the owners of such fishing weir, fishing mill-dam, or fixed engine to appear before them at a place and time mentioned in such notice.

Service of a notice under this section may be made either by delivering the notice personally to such owner, or leaving it at or sending it by post in a registered letter to his last known place of abode, or, if the owner cannot be ascertained after due inquiry, by posting a copy of the notice on the fishing weir, fishing mill-dam, or fixed engine that forms the subject of the inquiry.

The notice shall be in the form marked B. in the second schedule to the Salmon Fishery Act, 1865, or as near thereto as circumstances admit, and may be addressed as appears in the said schedule, and need not contain the name of any person.

For the purposes of this section any person for the time being receiving the profits or a share of the profits of the salmon caught by such fishing weir, fishing mill-dam, or fixed engine shall be deemed to be the owner, but in addition to any owner

the commissioners shall hear any person appearing before them, whether legally interested or not in a fishing weir, fishing mill-dam, or fixed engine.

Any person obstructing or refusing access to any officer of the commissioners who may be desirous of posting any notice in pursuance of this section on a fishing weir, fishing mill-dam, or fixed engine shall be liable to a penalty not exceeding five pounds for each offence, and any person defacing, destroying, or removing any such notice shall be liable to a penalty not exceeding forty shillings; and a notice shall be deemed to have been duly posted where the non-posting thereof has been occasioned by some person obstructing or refusing access to the officer about to post the same.

The production of a copy of a newspaper containing any advertisement required by this act shall, for the purposes of this act, be evidence of such advertisement having been given at the time at which the newspaper bears date (r).

Hearing as to
legality of
fixed engines.

On the appearance of the owner or other persons for or against any fishing weir, fishing mill-dam, or fixed engine, and after hearing what, if anything, is alleged by him or them, or on his or their behalf, or in the absence of any such persons, if they or any of them do not appear, and the commissioners are satisfied by evidence on oath that the notices required by the act have been given, the commissioners shall decide as to the legality or illegality of the fishing weir, fishing mill-dam, or fixed engine, and in the event of their decision being in favour of its illegality they may, by warrant under their hands, order the owner to remove a fishing weir, or render incapable of catching fish a fishing mill-dam, where the law requires such fishing weir or fixed engine to be removed, or such fishing mill-dam to be rendered incapable of catching fish, to the satisfaction of the commissioners, within a reasonable time to be prescribed in the order, not being less than three months; and in case the owner fails to comply with the directions of the order, then the commissioners may, by warrant under their hands, authorise any constable or other person, at the expense of the owner, to carry their order into effect. The commissioners may sell any fixed engine, or any materials belonging to any fishing weir or fishing

mill-dam, that are removed in pursuance of this act, and apply the proceeds of the sale in defraying any costs, charges, and expenses incident to carrying their order into effect in reference to such fishing weir, fishing mill-dam, or fixed engine, and shall render the surplus, if any, to the persons they may deem entitled thereto.

Provided that if it is proved to the satisfaction of the commissioners that any posts or other materials belonging to an illegal fishing weir or fixed engine ordered to be removed may be capable of being used by any person as evidence of title to any foreshore or other land, the commissioners shall, instead of ordering the entire removal of such posts or materials, require the fishing weir or fixed engine to be destroyed so far only as they may in their discretion think necessary in order to prevent its being used for fishing purposes (*s*).

If any person feels aggrieved with any decision of the commissioners the person aggrieved may appeal as follows; that is to say,

Appeal from
decision of
special com-
missioners.

1. The appeal shall be to one of her Majesty's superior courts of law at Westminster.
2. The appeal shall be by special case stating the facts and the grounds for the decision.
3. The special case shall be settled by the commissioners upon the application of the appellant to be made in writing within fourteen days after the delivery of the decision, and not afterwards; and if the appellant be dissatisfied with the special case as settled by the commissioners, he may have the same settled by a judge of one of the said superior courts, on summons, at chambers.
4. Before the delivery of the case to the appellant he shall enter into a recognizance before the said commissioners or a justice of the peace, with or without sureties, and in such sum as the commissioners or the justice think fit, conditioned to prosecute without delay the appeal, and to submit to the judgment of the appellate court, and to pay such costs as may be awarded.
5. The special case shall be signed by the commissioners, and shall be delivered to the appellant by the commissioners.

6. On the receipt of the special case the appellant shall within fourteen days transmit by post or otherwise the original case to the proper officer of the appellate court.
7. When a party gives in good faith notice of an appeal under this section, but omits through mistake to do some act necessary to perfect the appeal, the appellate court may permit an amendment on such terms as it thinks just.
8. After the decision of the appellate court has been given on a case stated as aforesaid, the commissioners shall have the same powers to enforce that decision, when affirmed or amended, as they would have had to have enforced their original decision if it had not been appealed from.
9. Save as hereinbefore varied, the provisions of the Summary Jurisdiction Act of the twentieth and twenty-first years of her Majesty's reign, chapter forty-three, as to the powers of the superior court, as to directing a special case to be stated, as to the enforcing of recognizances, and as to all other matters, shall apply to an appeal under this section in the same manner as if the words "justice or justices" in the said Summary Jurisdiction Act included the special commissioners appointed under this act.
10. Any act required by this section to be done by the commissioners may be done by any two of them, of whom the barrister shall be one (t).

Acts of the
commissioners.

All warrants for the removal of any fishing weir or fixed engine, or for the alteration of any fishing mill-dam, shall be signed by two at least of the commissioners, and all cases relating to the removal of such fishing weir or fixed engine, or alteration of any fishing mill-dam, shall be heard by all the commissioners, but the opinions of two of them, of whom the said barrister shall be one, shall, in case of difference, decide any question; any other acts, except as aforesaid, authorized to be done by the commissioners may be done by any one of them, and any notice or other instrument under the seal of the commis-

signers, and signed by any person delegated by them, shall be deemed to be sufficiently executed (w).

The commissioners may examine any witnesses on oath, and with respect to enforcing the attendance of witnesses, and the production of deeds, books, papers and documents, shall have the same powers as the judges of one of her Majesty's superior courts of Westminster have for such or the like purposes; moreover it shall be lawful for the commissioners to order any person to be removed from their court who may interrupt the business of the court, or refuse to obey their lawful orders in respect of the same; and it shall be the duty of the chief constable, commissioner or chief officer of police of the county, city, borough or place in which the court is held to take care that an officer of police do attend that court during its sitting for the purpose of keeping order therein, and to carry into effect any such order of the commissioners as aforesaid (x).

Powers of commissioners.

Copies of orders of the commissioners made in pursuance of this act, with the accompanying plans and maps, if any, shall be deposited with the clerk of the peace of the county where any engine or any subject-matter to which such order relates is situate; and any copy of such order, plan or map purporting to be stamped with the seal of the commissioners shall be admissible in evidence, and any copy of any certificate or order of the said secretary of state in pursuance of the Salmon Fishery Acts, 1861—1865, or either of them, purporting to be stamped with the official stamp of the office of the said secretary, and to be signed by any person by order of the said secretary of state, shall also be admissible in evidence (y).

Copies of orders of commissioners.

Every person who upon examination before the commissioners, or any one of them, wilfully gives false evidence, and every person who wilfully swears, affirms or declares falsely in any affidavit relating to any matter within the cognizance of the commissioners, shall be liable to the pains and penalties of perjury (z).

Penalty for false swearing.

Proceedings before the commissioners shall not abate or be suspended by any death or transmission or change of interest;

Proceedings not to abate by death.

(w) 28 & 29 Vict. c. 121, s. 49.

(x) Sect. 52.

(y) Sect. 53.

(z) Sect. 54.

but in any such case of death or transmission or change of interest it shall be lawful for the commissioners, when they see fit, to require notices to be given to persons becoming interested, or to make any orders for continuing, suspending or carrying on the proceedings, or otherwise in relation thereto, which to the commissioners appears just (a).

Discontinu-
ance of spe-
cial fishery
commission-
ers.
28 & 29 Vict.
c. 121.

After the 24th April, 1873, the offices of the special commissioners appointed under the Salmon Fishery Act, 1865, and all powers, rights and privileges pertaining thereto, shall determine, without prejudice nevertheless to anything done by the said commissioners before that date, and no further appointment of such commissioners shall be made under the said act (b).

(a) 28 & 29 Vict. c. 121, s. 55.

(b) 36 Vict. c. 13.

CHAPTER XII.

LEGAL PROCEDURE.

THE penalties imposed by the Salmon Fishery Acts or to be imposed by any bye-law made under the Salmon Fishery Act, 1873, and the following sums of money, costs and expenses:—

Expenses of repairing injuries to fish passes under the 23rd section of the Salmon Fishery Act, 1861 (*a*);

Expenses recoverable summarily under the Salmon Fishery Acts.

Expenses of making a fish pass in weirs raised or altered since the 6th August, 1861 (*b*);

The returning officer's expenses at elections (*c*);

Compensation under 50*l.* to be paid for the compulsory purchase of lands for fish passes or gratings (*d*);—

are to be recovered within six months after the offence has been committed, or the money expended under the provisions of the statute known as Jervis's Act (*e*), by which the procedure before magistrates in petty sessions is regulated (*f*). By this act it is provided, that an offender may be summoned in all cases where an information is laid

Procedure before justices.

(*a*) 24 & 25 Vict. c. 109, s. 23.

(*b*) Sect. 25; 36 & 37 Vict. c. 71, s. 46.

(*c*) 36 & 37 Vict. c. 71, s. 31.

(*d*) Sect. 54.

(*e*) 11 & 12 Vict. c. 43. See this act in the Appendix.

(*f*) 36 & 37 Vict. c. 71, s. 62.

against him. If he disobeys the summons a warrant may issue. Witnesses can be compelled to attend, and on refusing to attend or to be examined may be imprisoned for any term not exceeding seven days. Costs may be awarded to either party. Costs are recoverable by distress, or in default by imprisonment not exceeding a month with or without hard labour. On conviction penalties may be levied by distress, or in default of distress the defendant may be imprisoned for any term not exceeding three months with or without hard labour. The information may be laid before one justice, but must be heard by two, except in the case of a metropolitan police magistrate or alderman in the city of London, who may act alone (*d*).

Application
of penalties.

By the Salmon Fishery Act, 1861 (*e*), half the penalty went, if the court thought fit, to the complainant.

The forfeitures were to be disposed of as the court should direct and the proceeds applied in the same way as the penalty.

By the Salmon Fishery Act, 1865 (*f*), the whole of the penalty and the proceeds of any forfeiture were to be paid to the board of conservators to be applied for the purposes of the Salmon Fishery Acts, if the penalty had been recovered on the complaint of the board. But it having been held by various petty sessions, that unless the com-

(*d*) See the chief sections of the act set out in the Appendix.

(*e*) 24 & 25 Vict. c. 109, s. 35.

(*f*) 28 & 29 Vict. c. 121, s. 62.

plaint was *actually* instituted by the board, the institution by a water bailiff or person authorized by them not being held sufficient, it is now provided that all monies received and penalties recovered under the Salmon Fishery Acts or either of them on the complaint of a board of conservators, or of any officer or of any person authorized by a board of conservators, are to be paid to them to be applied by them for the purposes of the Salmon Fishery Acts, 1861 to 1873, unless the court for some special reason otherwise order (*g*).

Application
of penalties.

The word court means two or more magistrates assembled in petty sessions (*h*).

The penalties under the Salmon Acts Amendment Act, 1863, in England and Wales, except within the limits of the Tweed Fisheries Act, are to be recovered in the same way. In Ireland in the way prescribed in the act to regulate the Irish fisheries (5 & 6 Vict. c. 106). In Scotland, except within the limits of the Tweed Fisheries Act, in the way prescribed in the Salmon Fisheries (Scotland) Act, 1862 (25 & 26 Vict. c. 97); and, within the limits of the Tweed Fisheries Act, in the manner prescribed in the Tweed Fisheries Act, 1857 (20 & 21 Vict. c. cxlviii) (*i*).

Recovery of
penalties
under the
Salmon Acts
Amendment
Act, 1863.

Although the River Esk is by the Salmon Fishery Act, 1865 (*h*), to be deemed within the limits of the English Salmon Fishery Acts, all offences against those acts committed within

(*g*) 36 & 37 Vict. c. 71, s. 62.
 (*h*) 24 & 25 Vict. c. 109, s. 4.
 (*i*) 26 Vict. c. 10, s. 4.
 (*k*) 28 & 29 Vict. c. 121, s. 63.

Scotch jurisdiction are to be recovered in the way directed in the Scotch Salmon Fishery Act, 1862 (25 & 26 Vict. c. 97) (*k*).

Minimum
penalties.

The penalty on a second conviction for any offence against the Salmon Fishery Acts must be at least half the maximum penalty that can be given, but the magistrate need not fine more than 2*l.* 10*s.*, and the offender, if a licensee, on this and every subsequent conviction, in addition to the penalty forfeits his licence. On a third offence the magistrate must fine at least 5*l.*, and on a fourth or subsequent offence (*l*) the full penalty must be inflicted.

Imprison-
ment for
third offence
in certain
cases.

Instead of imposing a pecuniary penalty when a person is convicted a third time for using or having in his possession any light for the purpose of catching salmon, trout or char; using or having in his possession any otter lath, jack, wire, snare, spear, gaff, strokehall, snatch, or like instrument for catching or killing salmon, trout or char; using any fish roe for the purposes of fishing, or buying, selling or exposing for sale, or having in his possession any salmon, trout or char roe; taking any unclean or unseasonable salmon, or buying, selling, or having in his possession any unclean or unseasonable salmon, trout or char, or any part of one, the offender may be imprisoned for any period not less than one month and not exceeding six months with or without hard labour (*m*).

(*k*) 28 & 29 Vict. c. 121, s. 63.

(*l*) Sect. 57; 36 & 37 Vict. c. 71, s. 18.

(*m*) 28 & 29 Vict. c. 121, s. 56; 36 & 37 Vict. c. 71, s. 18.

It will be observed that the section as to minimum penalties speaks of offences against the Salmon Fishery Acts, and so the minimum penalties apply if the second conviction is for a wholly different offence than the first: for example, suppose a returning officer was convicted of violating the provisions of the act as to election, and was afterwards convicted of taking samlets, he would be liable to the minimum penalty for a second offence, and the magistrate would be bound to fine him at least fifty shillings.

In order to facilitate the boards of conservators, in proving previous convictions, if a person has been previously convicted for offences against the Salmon Fishery Acts, the clerks of the convicting justices are, within one month from the date of the conviction, to forward a certificate of the conviction to the clerk of the board of conservators, and if they do not do so they are liable to a penalty (n). The certificate is by the statute made receivable as evidence in all legal proceedings.

Record of
previous
conviction.

By the Salmon Fishery Act, 1865, a power is given to any person convicted under the Salmon Fishery Acts, 1861 and 1865, which power, as the acts are to be read together, extends to offences committed under the Salmon Fishery Act, 1873, to appeal to the quarter sessions for the county or place where he was convicted. Such appeal must be brought not less than fifteen days nor more than four months from the date of the decision. Notice

Appeal to
quarter
sessions.

(n) 36 & 37 Vict. c. 71, s. 11.

of the intention and grounds of appeal must be given in writing within three days from the decision; and within the same time the appellant must enter into recognizances with two sureties before a justice of the peace to try the appeal and abide the judgment thereon, and to pay such costs as may be awarded. The quarter sessions or general sessions may hear the appeal at once or adjourn it, and may, after hearing the appeal, confirm, reverse or modify the decisions of the petty sessions, with or without costs to either party (o).

Trial of cases
of pollution.

Where, under the 5th section of the Salmon Fishery Act, 1861, proceedings are taken before petty sessions against any person for mixing poisonous substances in rivers, the defendant, if he alleges by way of defence that he has taken the best practicable means at a reasonable cost to render the poisonous substance harmless, and proves that the expense of permanently diverting the pollution, exclusive of legal costs, exceeds 100*l.*, on giving such security as the court shall approve duly to prosecute an appeal and abide the event of it, the proceedings before the justices are to be stayed, and the complainant may bring an action against the defendant in one of the superior common law courts to try the question whether the defendant has used the best practicable means within a reasonable cost to render the noxious matter harmless. If the parties cannot agree upon the form of issue, or if the defendant

(o) 28 & 29 Vict. c. 121, s. 65.

does not appear, the court is to settle the issue; and the case is to be tried in the same way, and be subject to the same incidents, as actions are tried in other cases in that court (*p*).

The final verdict of the jury on the trial of such issue is to be conclusive in any subsequent proceedings under the section in regard to the pollution complained of. And all costs before the justices, and costs of the action, will have to be paid by the unsuccessful party (*p*).

It is needless to point out that on the trial of such a case either party could move for a new trial, or on any point of law that might arise appeal to the Exchequer Chamber and House of Lords. So that proceedings under these sections seem to open the door to very protracted and costly litigation. This is most likely the reason, added to the difficulty of proving that the poisonous matter did actually poison or kill fish, that no proceedings under this section seem to have ever been taken.

If any offence against the Salmon Fishery Acts is committed in any water forming the boundary between two counties, quarter or petty sessional districts, it may be tried in either county or district (*q*), or if it is committed on the sea coast or at sea, beyond the ordinary jurisdiction of the magistrates, it is to be tried in the nearest county adjoining the sea coast where the offence was committed (*r*).

Jurisdiction.

Offence on boundary of counties.

Offence at sea.

(*p*) 24 & 25 Vict. c. 109, s. 6.

(*q*) Sect. 36.

(*r*) Sect. 37.

Disqualifica-
tion of jus-
tices.

Reg. v.
Allan.

In consequence of the decision in the case of *Reg. v. Allan* (r), the 61st section of the Salmon Fishery Act, 1865, provided that no justice of the peace should be disqualified from hearing any case arising under the Salmon Fishery Acts, 1861 and 1865, by reason of his being a member of a board of conservators, or a subscriber to any society for the protection of salmon or trout. In that case Joseph Hodgson, the appellant in the case of *Hodgson v. Little* (s), was convicted for an offence against sect. 20 of the Salmon Fishery Act, 1861, in not having removed all fixed engines from his fishery at the commencement of the annual close time. In 1861 the Tees Salmon Fishery Land-owners' Association was formed to enforce the provisions of the Salmon Fishery Act, 1861, and otherwise for the protection of the breed of salmon under certain rules. The association consisted of two classes of members: first, ordinary members, owners of river side property or occupiers of the right of fishing in the Tees and its tributaries; secondly, honorary members who might be desirous of promoting the objects of the association by contributing to its funds. The committee, in the event of proceedings under the act being considered necessary, were to instruct the secretary to enforce its provisions. The secretary and treasurer were, subject to the approval of the committee, to determine what proceedings should be

(r) 4 B. & S. 915.

(s) 16 C. B., N. S. 198. See *ante*, p. 192.

taken against any person acting in contravention *Reg. v. Allan.* of the law.

Of the three justices who convicted Hodgson, R. H. Allan was an ordinary member of the association, being the owner of property having a frontage to the river, and had a right of fishing in it above the defendant's fishery. The Rev. J. Smith was an active member of the committee, and was present at a meeting of the association when a resolution was passed authorizing proceedings to be taken as to Hodgson's locks. J. W. Pease was a subscribing member of the association. The information was laid by Robert Little, a watcher appointed and paid by the association.

The case for the prosecution was conducted by Joseph Dodds, an attorney, who was honorary secretary and treasurer of the association, and Little was the principal witness on behalf of the prosecution. The defendant was convicted, fined 18*l.* and costs, and a portion of the penalty paid to Little as informer.

A rule was obtained calling upon Allan and others to show cause why a writ of certiorari should not issue to remove the conviction into the Queen's Bench for the purpose of quashing it.

In giving judgment the Lord Chief Justice Cockburn said: "This rule must be made absolute; it is impossible to hold consistently, with the principles which have been established by decided cases and are founded in the very essence of justice, that these magistrates were competent judges upon the occasion in question."

The rule was accordingly made absolute, and the conviction quashed.

In order to avoid any such proceedings in future, the Salmon Fishery Act, 1865, provides that no justice of the peace shall be disqualified by reason of his being a conservator or a member of a fishery association, except as to offences committed upon his own land (*t*).

Documents
made evi-
dence.

Under the Salmon Fishery Acts, the following documents have been made evidence:—

- (1) Copy of a newspaper containing advertisement of the appointment of a board of conservators (*u*):
- (2) Copy of newspaper containing advertisement of scale of licences is conclusive evidence of due notice having been given that in such district it is illegal to fish without a licence (*x*):
- (3) Copy of a newspaper containing notice of any court of the special commissioners was evidence that the court had been advertised (*y*):
- (4) Copies of orders of the special commissioners purporting to be sealed with their seal are admissible in evidence (*z*):
- (5) Copies of any certificate or order of the secretary of state in pursuance of the

(*t*) 28 & 29 Vict. c. 121, s. 61.

(*u*) Sect. 18.

(*x*) Sect. 34.

(*y*) Sect. 43.

(*z*) Sect. 53.

Salmon Fishery Acts, purporting to be stamped with the official stamp of the office of the said secretary and to be signed by any person by his order, shall also be admissible in evidence (*a*):

- (6) Copy of a newspaper containing the advertisement of any alteration of a fishery district by the secretary of state, is evidence of the advertisement having been given at the date of the newspaper (*b*):
- (7) Copy of certificate of the secretary of state as to the alteration of any district, certified to be a true copy by the clerk of the peace having the custody of the original, is evidence that all the requisitions as to the alteration of the district have been complied with (*c*):
- (8) Certificate of a conviction by the clerk of the magistrates sent to the clerk of the board of conservators (*d*):
- (9) The minutes of proceedings at meetings of boards of conservators, if signed by the chairman who presided at the meeting or the chairman of the next meeting, are receivable in evidence in all legal proceedings, and, until the contrary is proved, the meetings are to be deemed duly convened and held, and all the members duly qualified (*e*):

(*a*) 28 & 29 Vict. c. 121, s. 58.

(*b*) 36 & 37 Vict. c. 71, s. 7.

(*c*) Sect. 8.

(*d*) Sect. 11.

(*e*) Sect. 35.

- (10) A printed or written copy of any bye-law made by the board of conservators under the Salmon Fishery Acts, purporting to have been confirmed in the manner provided in the act and sealed with the seal of the board, is conclusive evidence of the existence and due making of the bye-law in all legal proceedings (*f*):
- (11) A copy of any newspaper containing notice of the making of any bye-law is evidence that all things required for the making and publication of the bye-law have been duly done, performed and published (*g*):
- (12) A copy of a scale of licences, approved by the secretary of state, certified to be a true copy by any person empowered to certify the same under the Documentary Evidence Act, 1868 (*h*), is evidence that the scale has been approved of and all steps required by the Salmon Fishery Acts, 1865 or 1873, as to the formation and approval of such scale has been taken (*i*).

Offences
against the
Salmon
Fishery Acts,
1861 to 1873.

The following is a list of offences against the Salmon Fishery Acts:—

Salmon Fishery Act, 1861:

- (1) Causing or knowingly permitting liquid or solid matter to be placed into any waters containing salmon, or into the tributaries

(*f*) 36 & 37 Vict. c. 71, s. 45.

(*g*) Ibid.

(*h*) See this act in the Appendix.

(*i*) 36 & 37 Vict. c. 71, s. 64.

of such waters, that poisons or kills fish. Polluting waters.
 Penalties: first offence 5*l.*; second, not less than 2*l.* 10*s.*, not more than 10*l.* and 2*l.* a day; third, not less than 5*l.*, not more than 20*l.* a day, from the date of third conviction; fourth, not less than 20*l.* a day (*k*):

- (2) Using or having in possession lights, otters laths, jacks, wires, snares, strokehalls, snatches, or other like instruments (except gaffs as auxiliary to a rod and line) for taking salmon, trout or char. Using lights, &c. Penalty: forfeiture of instruments; first offence, 5*l.*; second, not less than 2*l.* 10*s.*, not more than 5*l.*; third, not less than 5*l.*, or imprisonment for not less than one or more than six months (*l*):
- (3) Using any fish roe for fishing, or buying, selling, or having in possession any salmon, trout or char roe. Using fish roe for fishing. Penalty: forfeiture of roe; first offence, 2*l.*; second, not less than 2*l.*; third, imprisonment for not less than one or more than six months (*m*):
- (4) Using any nets with a less mesh than two inches, unless a smaller size is allowed by bye-law. Using small meshed nets. Penalty: forfeiture of nets; first offence, 5*l.*; second, not less than 2*l.* 10*s.*, or more than 5*l.*; third, not less than 5*l.* (*n*):

(*k*) 24 & 25 Vict. c. 109, s. 5.

(*l*) Sect. 8.

(*m*) Sect. 9.

(*n*) Sect. 10.

Using new
fixed engines.

- (5) Placing or using any fixed engine not lawfully in use in 1857, 1858, 1859, 1860 and 1861, for catching, or facilitating the catching, or deterring or obstructing the free passage, of salmon. Penalty: forfeiture of engine; first offence, 10*l.* a day; second, not less than 2*l.* 10*s.* in whole, not exceeding 10*l.* a day; third, not less than 5*l.* in whole, not exceeding 10*l.* a day; fourth, not less than 10*l.* a day (*o*):

Using illegal
dams.

- (6) Using any dam, except legal fishing weirs and fishing mill-dams, for catching, or facilitating the catching, of salmon. Penalty: forfeiture of all traps, nets and contrivances, and all salmon caught; first offence, not exceeding 5*l.* and 1*l.* for each salmon caught; second, not less in the whole than 2*l.* 10*s.*, and not exceeding 5*l.* and 1*l.* for each salmon; third, not less than 5*l.*, and not exceeding 5*l.* and 1*l.* for each salmon caught; fourth, not less than 5*l.* and 1*l.* for each salmon caught (*p*):

Fishing with-
in 100 yards
below a weir.

- (7) Fishing for any salmon within fifty yards above or one hundred yards below any dam, or in the head, tail or race of any mill, unless the dam has a fish pass, approved by the Home Office, with such a flow of water as will enable salmon to pass up and down. Penalty: forfeiture of all salmon caught and nets used; first offence, 2*l.* and

(*o*) 24 & 25 Vict. c. 109, s. 11.

(*p*) Sect. 12.

1*l.* for each salmon caught; second, not less in whole than 2*l.* 10*s.*, and not exceeding 2*l.* and 1*l.* for each salmon caught; third, not less than 5*l.*, and not exceeding 5*l.* and 1*l.* for each salmon caught; fourth, not less than 5*l.* and 1*l.* for each salmon caught (*g*):

- (8) Refusing to place a grating, approved by the inspectors, across any artificial channel for supplying towns with water, or any inland navigation. Penalty: not exceeding 5*l.* a day for first offence; second, not less than 2*l.* 10*s.*, not exceeding 5*l.* a day; third, not less than 5*l.*, and not exceeding 5*l.* a day; fourth, not less than 5*l.* a day (*r*): Not placing gratings.
- (9) Refusing to maintain such grating. Penalty: not exceeding 1*l.* a day for the first; second, not less than 2*l.* 10*s.*, and not exceeding 1*l.* a day; third, not less than 5*l.*, and not exceeding 1*l.* a day; fourth, not less than 1*l.* a day (*r*): Not maintaining gratings.
- (10) Taking, killing, injuring, or attempting to take, buying, selling, exposing for sale, or having in possession for sale, any unclean or unseasonable salmon, trout or char. Penalty: forfeiture of fish; first offence, 5*l.* and 1*l.* for each fish; second, not less than 2*l.* 10*s.*, not exceeding 5*l.* and 1*l.* a fish; third, not less than 5*l.*, and not exceeding 5*l.* and 1*l.* a fish, or imprisonment for not less than one or more than six Taking unclean or unseasonable salmon.

(*g*) 24 & 25 Vict. c. 109, s. 12.

(*r*) Sect. 13.

months; fourth, not less than 5*l.* and 1*l.* a fish or imprisonment (*s*):

Taking the
young of sal-
mon.

- (11) Taking or destroying, buying, selling or exposing for sale, placing any device for obstructing the passage of, or wilfully injuring the young of salmon, or disturbing any spawning bed on which the spawn of salmon may be. Penalty: forfeiture of all young of salmon, rods, lines, nets, &c.; first offence, not exceeding 5*l.*; second, not less than 2*l.* 10*s.* nor more than 5*l.*; third, not less than 5*l.* (*t*):

Disturbing
salmon
spawning.

- (12) Disturbing or attempting to catch any salmon spawning or near the spawning beds. Penalty: first offence, not exceeding 5*l.*; second, not less than 2*l.* 10*s.* or more than 5*l.*; third, not less than 5*l.* (*u*):

Fishing dur-
ing close sea-
son.

- (13) Fishing for salmon during the annual close season. Penalty: forfeiture of salmon and nets, or instruments used in fishing; first offence, not exceeding 5*l.* and 2*l.* for each fish caught; second, not less than 2*l.* 10*s.* and not exceeding 5*l.*, and 2*l.* for each fish caught; third, not less than 5*l.* and not exceeding 5*l.*, and 2*l.* for each fish caught, or imprisonment for not less than one nor more than six months; fourth, not less than 5*l.*, and 2*l.* for each fish caught, or imprisonment (*x*):

(*s*) 24 & 25 Vict. c. 109, s. 14.

(*t*) Sect. 15.

(*u*) Sect. 16.

(*x*) Sect. 17.

- (14) Not removing fixed engines and temporary fixtures from a fishery within thirty-six hours after close time begins. Not removing fixed engine during close time. Penalty: forfeiture of all engines and temporary fixtures, &c.; first offence, not exceeding 10*l.* a day; second, not less than 2*l.* 10*s.* and not exceeding 10*l.* a day; third, not less than 5*l.* and not exceeding 10*l.* a day; fourth not less than 10*l.* a day (*y*):
- (15) Fishing for salmon during weekly close time. Fishing during weekly close time. Penalty: forfeiture of all nets or moveable instruments used; first offence, not exceeding 5*l.* and 1*l.* for each fish; second, not less than 2*l.* 10*s.* and not exceeding 5*l.*, and 1*l.* for each fish; third, not less than 5*l.* and not exceeding 5*l.*, and 1*l.* for each fish; fourth, not less than 5*l.*, and 1*l.* for each fish (*z*):
- (16) Not maintaining an opening through cribs and traps during the weekly close time. Not maintaining an opening through cribs during weekly close time. Penalty: forfeiture of fish; first offence, 5*l.* and 1*l.* a fish; second, not less than 2*l.* 10*s.* and not exceeding 5*l.*, and 1*l.* a fish; third, not less than 5*l.* and not exceeding 5*l.*, and 1*l.* a fish; fourth, not less than 5*l.*, and 1*l.* a fish (*a*):
- (17) Obstructing any person authorized by the Home Office to make a fish pass. Obstructing persons making a fish pass. Penalty: first offence, 10*l.*; second, not less than 2*l.* 10*s.* and not exceeding 10*l.*; third, not

(*y*) 24 & 25 Vict. c. 109, a. 20.

(*z*) Sect. 21.

(*a*) Sect. 22.

- less than 5*l.* and not exceeding 10*l.*; fourth, not less than 10*l.* (*b*):
- Injuring any fish pass. (18) Injuring any fish pass made under the authority of the Home Office. Penalty: the expense of making good the injury; first offence, not exceeding 5*l.*; second, not less than 2*l.* 10*s.* and not exceeding 5*l.*; third, not less than 5*l.* (*b*):
- Taking salmon in a fish pass. (19) Doing any act whereby salmon are prevented passing through a fish pass, or taking salmon passing through a fish pass. Penalty: forfeiture of salmon and instruments used in taking them; first offence, 5*l.*; second, not less than 2*l.* and not exceeding 10*l.*; third, not less than 5*l.* and not exceeding 10*l.*; fourth, not less than 10*l.* (*b*):
- Not making fish pass in new weir. (20) Not affixing a fish pass to any new dam or to any old dam raised or altered so as to create increased obstruction to fish. Penalty: expense of making the fish pass, and not exceeding 5*l.* for first offence; not less than 2*l.* 10*s.* nor more than 5*l.* for second; and not less than 5*l.* for the third (*c*):
- Not keeping the sluices shut. (21) Not keeping the sluices that draw off the water from a dam shut on Sundays and when the water is not wanted for milling purposes. Penalty: first offence, not ex-

(*b*) 24 & 25 Vict. c. 109, s. 23.

(*c*) Sect. 25.

ceeding 5*s.* an hour; second, not less than 2*l.* 10*s.* and not exceeding 5*s.* an hour; third, not less than 5*l.* and not exceeding 5*s.* an hour; fourth, not less than 5*s.* an hour (*d*):

- (22) Not making a legal free gap in a fishing weir. Penalty: first offence, not exceeding 5*l.* a day; second, not less than 2*l.* 10*s.* and not exceeding 5*l.* a day; third, not less than 5*l.* and not exceeding 5*l.* a day; fourth, not less than 5*l.* a day (*e*). Not making a legal free gap in a fishing weir.

- (23) Not maintaining a legal free gap or altering the bed of the river so as to reduce the flow of water through a legal free gap. Penalty: first offence, 1*l.* a day; second, not less than 2*l.* 10*s.* nor more than 1*l.* a day; third, not less than 5*l.* nor more than 1*l.* a day; fourth, not less than 1*l.* a day (*e*): Not maintaining a legal free gap.

- (24) Placing any obstruction, using any contrivance, or doing any act whereby salmon are deterred in passing up and down a free gap. Penalty: first offence, not exceeding 5*l.*; second, not less than 2*l.* 10*s.* and not exceeding 10*l.*; third, not less than 5*l.* and not exceeding 10*l.*; fourth, not less than 10*l.* (*e*): Obstructing salmon passing up and down a free gap.

- (25) Using any box or crib in any fishing weir or fishing mill-dam, the upper surface of the sill of which is not level with the bed of Using box, crib or crube not in conformity with the act.

(*d*) 24 & 25 Vict. c. 109, s. 26.

(*e*) Sect. 28.

the river, and the bars or inscales of which are nearer than two inches and not placed perpendicularly. Penalty: first offence, not exceeding 5*l.* a day; second, not less than 2*l.* 10*s.* and not exceeding 5*l.* a day; third, not less than 5*l.* and not exceeding 5*l.* a day; fourth, not less than 5*l.* a day (*h*):

Not main-
taining box or
crib in accord-
ance with act.

- (26) Not maintaining a box or crib in such state. Penalty: first offence, not exceeding 1*l.* a day; second, not less than 2*l.* 10*s.* and not exceeding 1*l.* a day; third, not less than 5*l.* and not exceeding 1*l.* a day; fourth, not less than 1*l.* a day (*h*):

Using any
spur or tail
wall larger
than twenty
feet.

- (27) Using any box or crib in any fishing weir or fishing mill-dam, having any spur, tail wall, leader, or outrigger of a greater length than twenty feet from the upper or lower side of such box or crib. Penalty: first offence, not exceeding 1*l.* a day; second, not less than 2*l.* 10*s.* and not exceeding 1*l.* a day; third, not less than 5*l.* and not exceeding 1*l.* a day; fourth, not less than 1*l.* a day (*i*).

Salmon Fishery Act, 1865:

Fishing for
salmon with
a rod and line
without a
licence.

- (28) Fishing for salmon with a rod and line without a licence. Penalty: first offence, not less than double the amount of the licence duty, and not exceeding 5*l.*; second,

(*h*) 24 & 25 Vict. c. 109, s. 29.

(*i*) Sect. 30.

not less than 2*l.* 10*s.* and not exceeding 5*l.*; third, not less than 5*l.* (*k*):

- (29) Fishing for salmon within any fishing weir, fishing mill-dam, putt, putcher, net, or other instrument or device other than a rod and line. Fishing for salmon with any weir and without a licence. Penalty: first offence, not less than double the licence duty payable and not exceeding 20*l.*; second, not less than 2*l.* 10*s.* and not exceeding 20*l.*; third, not less than 5*l.* and not exceeding 20*l.*; fourth, not less than 20*l.* (*l*):
- (30) Any person fishing refusing to produce his licence on being asked by a conservator, water bailiff or licensee. Not producing licence. Penalty: first offence, not exceeding 1*l.*; second, not less than 2*l.* 10*s.*; third, not less than 5*l.* (*m*):
- (31) Fishing for trout or char between the 2nd October and the 1st February following, both inclusive. Fishing for trout and char during close time. Penalty: forfeiture of fish; first offence, not exceeding 2*l.*; second, not less than 2*l.* 10*s.*; third, not less than 5*l.* (*n*):
- (32) Not entering salmon intended for exportation with the proper officer of customs before shipment, between the 3rd September and the 30th April. Not properly entering salmon for exportation. Penalty: first offence, not exceeding 2*l.* a fish; second, not less than 2*l.* 10*s.* and not exceeding 2*l.*

(*k*) 28 & 29 Vict. c. 121, s. 35.

(*l*) Sect. 36.

(*m*) Sect. 37.

(*n*) Sect. 64.

a fish; third, not less than 5*l.* and not exceeding 2*l.* a fish; fourth, not less than 2*l.* a fish (*o*).

Salmon Fishery Act, 1873 :

Clerk of peace
omitting to
send names of
conservators.

- (33) Clerk of the peace omitting to send notice of the names and addresses of the conservators appointed by different counties where the district comprises more than one county to the clerk of the board within fourteen days of the appointment. Penalty: first offence, 2*l.*; second, not less than 2*l.* 10*s.*; third, not less than 5*l.* (*p*):

Clerk of justices
omitting to send certificate
of conviction.

- (34) Clerk of the justices not sending certificate of any conviction against the Salmon Fishery Acts to the clerk of the board of conservators within one month. Penalty: first offence, not exceeding 2*l.*; second, not less than 2*l.* 10*s.*; third, not less than 5*l.* (*q*):

Shooting
draft nets
before other
nets landed.

- (35) Shooting any draft net for salmon across a river or across more than three-quarters of its width within 100 yards of any other draft net not drawn in and landed. Penalty: first offence, not exceeding 5*l.*; second, not less than 2*l.* 10*s.* and not exceeding 5*l.*; third, not less than 5*l.* (*r*):

Catching eels
between 1st
January and
24th June.

- (36) Using between the 1st January and the 24th June any device for catching eels or the fry of eels. Penalty: first offence, not

(*o*) 28 & 29 Vict. c. 121, s. 65.

(*p*) 36 & 37 Vict. c. 71, s. 10.

(*q*) Sect. 11.

(*r*) Sect. 14.

exceeding 2*l.* a day; second, not less than 2*l.* 10*s.* and not exceeding 2*l.* a day; third, not less than 5*l.* and not exceeding 2*l.* a day; fourth, not less than 2*l.* a day (*s*):

- (37) Placing any device to prevent fish descending the stream. Penalty same as in last case (*t*): Preventing fish descending a stream.
- (38) Placing upon the apron of any weir any basket, trap or device for taking fish. Penalty same as in (36) (*t*): Placing basket on weir.
- (39) Placing during the annual or weekly close season any contrivance for doing any act to deter salmon passing up a river. Penalty: first offence, not exceeding 5*l.*; second, not less than 2*l.* 10*s.* and not exceeding 5*l.*; third, not less than 5*l.* (*u*): Detering salmon ascending river during annual or weekly close time.
- (40) Fishing for, scaring or disturbing salmon fifty yards above or 100 yards below any weir, dam or artificial obstruction, or in waters under or appurtenant to any mill, or in the head race, tail race or waste race of any mill or fishing so as to deter salmon passing through a fish pass or over a weir. Penalty: forfeiture of all nets and implements used; first offence, not exceeding 5*l.* and 1*l.* for each salmon caught; second, not less than 2*l.* 10*s.* and not exceeding 5*l.* and 1*l.* for each salmon caught; third, not less than 5*l.* and not exceeding 5*l.* and 1*l.* Fishing for salmon 100 yards below or 50 yards above a dam.

(*s*) 36 & 37 Vict. c. 71, s. 15.

(*t*) Ibid.

(*u*) Sect. 16.

- for each salmon caught; fourth, not less than 5*l.* and 1*l.* for each salmon caught (*u*):
- Buying or selling salmon during close time. (41) Buying, selling, exposing for sale or having in possession for sale any salmon or part of any salmon during close time. Penalty: forfeiture of all fish; first offence, not exceeding 2*l.* for each fish; second, not less than 2*l.* 10*s.* and not exceeding 2*l.* for each fish; third, not less than 5*l.* and not exceeding 2*l.* for each fish; fourth, not less than 2*l.* for each fish (*x*):
- Buying, selling or exposing for sale trout or char during close time. (42) Buying, selling, exposing for sale, or having in possession for sale any trout or char between the 2nd October and 2nd February. Penalty: forfeiture of fish; first offence, not exceeding 1*l.* for each fish; second, not less than 2*l.* 10*s.* and not exceeding 1*l.* for each fish; third, not less than 5*l.* and not exceeding 1*l.* for each fish; fourth, not less than 1*l.* for each fish (*y*):
- Fraudulently endorsing a licence. (43) Fraudulently endorsing upon a licence more names than the licensee is entitled to have endorsed, or endorsing any but the actual date of endorsement. Penalty: first offence, not exceeding 20*l.*; second, not less than 2*l.* 10*s.* and not more than 20*l.*; third, not less than 5*l.* and not more than 20*l.*; fourth, not less than 20*l.* (*z*):

(*u*) 36 & 37 Vict. c. 71, s. 17.

(*x*) Sect. 19.

(*y*) Sect. 20.

(*z*) Sect. 21.

- (44) Fishing for salmon without a proper licensed instrument. Penalty: first offence, not exceeding 5*l.* and 1*l.* for each salmon caught; second, not less than 2*l.* 10*s.* and not exceeding 5*l.* and 1*l.* for each fish; third, not less than 5*l.* and not exceeding 5*l.* and 1*l.* for each fish; fourth, not less than 5*l.* and 1*l.* for each fish (*a*): Fishing for salmon without a licensed instrument.
- (45) Any ex-officio conservator making a false declaration as to his qualification or refusing to make a declaration if required. Penalty: first offence, not exceeding 5*l.*; second, not less than 2*l.* 10*s.* and not exceeding 5*l.*; third, not less than 5*l.* (*b*): Ex-officio conservator making a false declaration.
- (46) Any returning officer wilfully neglecting or refusing to comply with the provisions of the Salmon Fishery Act, 1873. Penalty: first offence, not exceeding 5*l.*; second, not less than 2*l.* 10*s.* and not exceeding 5*l.*; third, not less than 5*l.* (*c*): Returning officer not observing act.
- (47) Fabricating, altering, defacing, destroying, abstracting or purloining any voting paper, or personating any voter. Penalty: first offence, not exceeding 20*l.* or imprisonment for not exceeding three months with or without hard labour; second offence, not less than 2*l.* 10*s.* and not exceeding 20*l.* or imprisonment; third, not less than 5*l.* and not exceeding 20*l.* or imprison-

(*a*) 36 & 37 Vict. c. 71, s. 22.

(*b*) Sect. 28.

(*c*) Sect. 32.

ment ; fourth, not less than 20*l*. or imprisonment (*d*) :

Refusing
water bailiff
access to any
weir.

- (48) Refusing a water bailiff access to any weir, dam, fishing weir, fishing mill-dam, fixed engine, obstruction or watercourse. Penalty: first offence, not exceeding 5*l*.; second, not less than 2*l*. 10*s*. and not exceeding 5*l*.; third, not less than 5*l*. (*e*) :

Refusing to
allow water
bailiff to
search boat.

- (49) Refusing to allow a water bailiff to search or resisting or obstructing any water bailiff in his search of any boat, barge, coracle or other vessel used in fishing, or which he suspects contains salmon. Penalty same as last (*e*) :

Refusing to
allow water
bailiff to
search net, &c.

- (50) Refusing, resisting or obstructing any water bailiff in searching and examining all nets, baskets, bags or other instruments used in fishing or in carrying fish. Penalty same as in (48) (*e*) :

Acting in con-
travention of
any bye-law.

- (51) Acting in contravention of any bye-law made by a board of conservators. Penalty: first offence, not exceeding 5*l*.; second, not less than 2*l*. 10*s*. and not exceeding 5*l*.; third, not less than 5*l*. (*f*) :

Clerk refus-
ing to give
copy of bye-
law.

- (52) The clerk of any board of conservators refusing to give a licensee a copy of a bye-law or to allow any one to inspect the bye-laws. Penalty: first offence, not exceeding

(*d*) 36 & 37 Vict. c. 71, s. 33.

(*e*) Sect. 36.

(*f*) Sect. 39.

5*l.*; second, not less than 2*l.* 10*s.* and not exceeding 5*l.*; third, not less than 5*l.* (*g*):

- (53) Building a new weir, or rebuilding a weir more than half its length without a fish pass as part of its structure. Building new weir without a fish pass. Penalty: the expense of making the fish pass; first offence, not exceeding 20*l.*, and 2*l.* a day from the date of the first conviction; second, not less than 2*l.* 10*s.* and not exceeding 20*l.*, and 2*l.* a day; third, not less than 5*l.* and not exceeding 20*l.*, and 2*l.* a day; fourth, not less than 20*l.*, and 2*l.* a day (*h*):

- (54) Wilfully altering or injuring any fish pass, or doing any act whereby fish are liable to be obstructed in using it, or whereby it is less efficient, or altering the bed or bank of the river so as to make it less efficient. Injuring any fish pass. Penalty: expense of restoring the pass; first offence, not exceeding 5*l.*; second, not less than 2*l.* 10*s.* and not exceeding 5*l.*, and 1*l.* a day; third, not less than 5*l.* and not exceeding 5*l.*, and 1*l.* a day; fourth, not less than 5*l.*, and 1*l.* a day (*i*):

- (55) Refusing to admit or obstructing any inspector or person duly appointed by a board of conservators in inspecting any weir, dam, fishing weir, fishing mill-dam, fixed engine, or obstruction, mill race or Refusing to admit inspector or person authorized by board.

(*g*) 36 & 37 Vict. c. 71, s. 43.

(*h*) Sect. 46.

(*i*) Sect. 48.

watercourse. Penalty: first offence, not exceeding 5*l.*; second, not less than 2*l.* 10*s.* and not exceeding 5*l.*; third, not less than 5*l.* (*k*):

Injuring or removing gratings.

(56) Injuring, removing, or shutting any gratings during the time the board of conservators prescribe they shall be kept up. Penalty: first offence, not exceeding 5*l.*; second, not less than 2*l.* 10*s.* and not exceeding 5*l.*; third, not less than 5*l.* (*l*).

Forfeiture of licence.

In all offences under the Salmon Fishery Acts, if the offender is a licensee his licence is forfeited on a second and every subsequent conviction (*m*).

Saving as to dredging.

Nothing in the Salmon Fishery Act, 1861, is to prejudice the legal right of any conservators, directors, commissioners, undertakers, persons or body of persons, corporate or incorporate, to dredge, scour, cleanse or improve any navigable river, canal, or inland navigation (*n*).

Repeal of acts:

By the Salmon Fishery Act, 1861, the following public acts or parts of acts were repealed:—

By Salmon Fishery Act, 1861.

13 Edw. 1, st. 1, c. 47; 25 Edw. 3, st. 4, c. 4; 45 Edw. 3, c. 2; 13 Rich. 2, st. 1, c. 19; 17 Rich. 2, c. 9; 1 Hen. 4, c. 12; 4 Hen. 4, c. 11; 2 Hen. 6, c. 15; 12 Edw. 4, c. 7; 11 Hen. 7, c. 5; 14 & 15 Hen. 8, c. 13; 23 Hen. 8, c. 18; 1 Eliz. c. 17 (so far as relates to salmon); 3 Jac. 1, c. 12; 3 Car. 1, c. 4, s. 1; 30 Car. 2, c. 9; 4 Ann.

(*k*) 36 & 37 Vict. c. 71, s. 58.

(*l*) Sect. 61.

(*m*) 28 & 29 Vict. c. 121, s. 56.

(*n*) 24 & 25 Vict. c. 109, s. 38.

c. 21; 9 Ann. c. 26, s. 2; 1 Geo. 1, st. 2, c. 18, ss. 11 to 18 inclusive; 23 Geo. 2, c. 26, ss. 7, 8 and 9; 33 Geo. 2, c. 27, s. 13; 18 Geo. 3, c. 33 (so far as relates to salmon); 37 Geo. 3, c. 95 (so far as relates to salmon); 58 Geo. 3, c. 43; 6 & 7 Vict. c. 33; 11 & 12 Vict. c. 52, and several private acts (*o*).

The Salmon Fishery Act, 1865, did not repeal any of the existing laws.

The Salmon Fishery Act, 1873 (*p*), has repealed the 18th (extension of close season), 19th (penalty on selling fish during close time), and 35th (recovery of penalties) sections of the Salmon Fishery Act, 1861, the 14th (ex officio qualification), 20th (alteration of fishery district), 24th (amendment of s. 18 of the Act of 1861), 26th (evidence of proceedings at meetings), 30th (water bailiffs), 34th, sub-sections 1 and 2 (rules as to issuing licences), and the 1st schedule (scale of licence duties) of the Salmon Fishery Act, 1865; new provisions having been substituted for them in the Salmon Fishery Act of 1873.

By Salmon
Fishery Act,
1873.

But the repeal does not affect any security previously given, anything previously duly done, any liability accruing, any penalty, forfeiture, or punishment incurred in respect of any offence committed, or the institution of any legal proceedings for anything already done (*q*).

(*o*) 24 & 25 Vict. c. 109, s. 39, and Schedule.

(*p*) 36 & 37 Vict. c. 71, s. 65.

(*q*) 24 & 25 Vict. c. 39.

Statutes as to Legal Procedure.

Recovery of penalties.

All penalties imposed by "The Salmon Fishery Acts, 1861 to 1878," or by any bye-law made in pursuance of this act, and all sums of money, costs, and expenses by the said acts or either of them directed to be recovered in a summary manner, may be recovered within six months after the commission of the offence before two justices, in manner directed by an act passed in the eleventh and twelfth years of the reign of her present Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales, with respect to summary conviction and orders," or of any act amending the same. And all moneys received and penalties recovered under the said acts or any of them on the complaint of a board of conservators, or of any officer of or a person authorized by a board of conservators, shall be paid to the board of conservators for the district, to be applied by them for the purposes of the Salmon Fishery Acts, 1861 to 1878 (unless the court for some special reason otherwise order) (*g*).

Payment of penalties to conservators in certain cases.

Where any penalty is recovered on the complaint of a board of conservators or of any officer of or person authorized by a board of conservators, the court shall, unless for special reason they think it inexpedient so to do, direct the whole of the penalty and the proceeds of any forfeiture to be paid to the said board, to be applied by them for the purposes of the Salmon Fishery Acts, 1861, 1865 (*r*).

Recovery of penalties under Salmon Acts Amendment Act, 1863.

All penalties under the Salmon Acts Amendment Act, 1863, may be recovered in England, except within the limits of the Tweed Fisheries Act, as penalties under the Salmon Fishery Acts; in Ireland as penalties under the act passed in the session of the fifth and sixth years of the reign of her present Majesty, chapter one hundred and six, intituled "An Act to regulate the Irish Fisheries;" in Scotland, except within the limits of the Tweed Fisheries Act, as penalties under the Salmon Fisheries (Scotland) Act, 1862; and within the limits of the Tweed Fisheries Act, in manner prescribed by the Tweed Fisheries Act, 1857 (*s*).

(*g*) 36 & 37 Vict. c. 71, s. 62.

(*r*) 28 & 29 Vict. c. 121, s. 62.

(*s*) 26 Vict. c. 10, s. 4.

The River Esk together with its tributary banks and streams up to their source shall be deemed to be within the limits of the Salmon Fishery Acts, 1861 to 1873: provided that all offences against the said acts committed within Scotch jurisdiction shall be prosecuted and punished in manner directed by the Salmon Fisheries (Scotland) Act, 1862 (†).

River Esk
within limits
of Salmon
Fishery Acts.

The penalty in respect of any offence under the Salmon Fishery Acts, 1861 to 1873, or any bye-law made under the authority of the Salmon Fishery Act, 1873, shall on a conviction for a second offence be not less than one half the greatest penalty capable of being imposed in respect of such offence; and on a conviction for a third or any subsequent offence the greatest amount of penalty mentioned in the said acts shall be imposed; but it shall not be imperative on any justices to inflict a greater penalty than 50s. for a second offence, or than 5*l.* for a third offence under the Salmon Fishery Acts, 1861 to 1873: but nothing herein contained shall affect the provisions of the Salmon Fishery Act, 1865, in respect of the discretion of imposing the punishment of hard labour as therein mentioned (u).

Minimum
penalties.

Where any person has been convicted twice of an offence under any of the following sections of the Salmon Fishery Act, 1861, that is to say, sections eight, nine, fourteen, and seventeen, he may, on being convicted a third time of an offence against any of the said sections, instead of being fined in a pecuniary penalty, be sentenced to imprisonment with or without hard labour for any period not exceeding six months or less than one month (x).

Power in
certain cases
to award im-
prisonment
with hard
labour
instead of
penalty.

A licensee, on being convicted a second time of an offence against the Salmon Fishery Acts, 1861, 1865, forfeits his licence (y).

Forfeiture of
licence.

Where any person is convicted of an offence under the Salmon Fishery Acts 1861 to 1873, or under any bye-law made in pursuance of the Salmon Fishery Act, 1873, the clerk of the justices before whom such person is convicted shall forward a certificate of such conviction to the clerk of the board of conservators for the fishery district within which such conviction took place within one calendar month from the date of such conviction, and such

Minute of
conviction to
be sent to
board of
conservators.

(†) 28 & 29 Vict. c. 121, s. 63.

(u) Sect. 57; 36 & 37 Vict. c. 71, s. 18.

(x) 28 & 29 Vict. c. 121, s. 50.

certificate shall be receivable in evidence in all legal proceedings, and any clerk to any justices neglecting or refusing to forward such certificate to the clerk of the board of conservators, shall for every such refusal or neglect be liable to a penalty of not exceeding two pounds (y).

Appeal to
quarter
sessions in
case of sum-
mary convic-
tion.

If any person feels aggrieved by any determination or adjudication of the justices with respect to any penalty or forfeiture under the Salmon Fishery Acts, 1861, 1873, or either of the said acts, the person so aggrieved may appeal to the court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the justices from which the appeal is made; provided that the appellant shall, within three days after the cause of appeal has arisen, give notice in writing to the other party to the proceedings of his intention to appeal, and of the grounds thereof; and also provided that the appellant shall, within three days after the cause of appeal has arisen, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court: the court may adjourn the appeal, and upon the hearing thereof may confirm, reverse or modify the decision of the justices, with or without costs, to be paid by either party (z).

Power to
have question
as to pollution
tried by a
jury.

Where any proceedings are instituted by any complainant against any person for the recovery of any penalties alleged to have been incurred by him in respect of any pollution against the 5th section of the Salmon Fishery Act, 1861, if such person, hereinafter referred to as "the defendant," on appearing before the justices constituting the court by which he is to be tried in pursuance of the Salmon Fishery Act, 1861, alleges, by way of defence, that he has used the best practicable means, within a reasonable cost, to render such matter harmless, and proves to the satisfaction of the court that in the event of the complaint being decided against him the expense of permanently preventing the matter complained of would, exclusive of costs, exceed one hundred pounds, and gives security to be approved by such court duly to prosecute his appeal and to abide the event thereof, all

(y) 36 & 37 Vict. c. 71, s. 11.

(z) 28 & 29 Vict. c. 121, s. 66.

proceedings before the justices shall be stayed, and it shall be lawful for such complainant to bring an action in one of her Majesty's superior courts of law at Westminster against the defendant; and the plaintiff in such action shall deliver to the defendant an issue or issues whereby the question whether he has used the best practicable means within a reasonable cost, to render such matter harmless may be tried; and the form of such issue or issues, in case of dispute, or in the case of non-appearance of the defendant, shall be settled by the court in which the action is brought, and such action shall be prosecuted and issue or issues tried in the same manner, and subject to the same incidents in and subject to which actions are prosecuted and issues tried in other cases within the jurisdiction of such court, or as near thereto as circumstances admit (*a*).

The verdict of the jury on such issue shall, unless the court before which the same is tried orders a new trial, be conclusive as to the questions involved in any subsequent proceedings that may be had for the recovery of any penalties in pursuance of the said section, and any costs that may have been incurred before the justices by the parties to such action as is mentioned in this section shall be deemed to be costs incurred in such action, and be payable accordingly (*b*).

Effect of
issue.

Where any offence under the Salmon Fishery Acts is committed in or upon any waters forming the boundary between any two counties, districts of quarter sessions or petty sessions, such offence may be prosecuted before any justice or justices of the peace in either of such counties or districts (*c*).

Offences on
rivers may be
tried in
county on
either side.

Any offence committed under the Salmon Fishery Acts on the sea coast or at sea, beyond the ordinary jurisdiction of any justice of the peace, shall be deemed to have been committed within the body of any county abutting on such sea coast or adjoining such sea, and may be tried and punished accordingly (*d*).

Offences
committed
on sea coast,
where to be
tried.

No justice of the peace shall be disqualified from hearing any case arising under the Salmon Fishery Acts, 1861, 1873, by reason of his being a conservator or a member of a board of conservators, or a subscriber to any society for the protection

As to the
disqualifica-
tion of
justices.

(*a*) 24 & 25 Vict. c. 109, s. 6.

(*b*) Sect. 7.

(*c*) 28 & 29 Vict. c. 121, s. 57.

(*d*) 24 & 25 Vict. c. 109, s. 37.

of salmon or trout; provided that no justice shall be entitled to hear any case in respect of an offence committed on his own land (f).

Copy of certificate of formation of districts to be evidence.

A copy of the certificate or certificates of the secretary of state deposited with the clerk of the peace of any county in relation to the formation, enlargement, combination, reduction or alteration of a fishery district granted in pursuance of the fifth section of the Salmon Fishery Act, 1865, or of the Salmon Fishery Act, 1873, certified or purporting to be certified as a true copy by the clerk of the peace of such county, shall be evidence that all the requisitions contained in the Salmon Fishery Act, 1865, or in the Salmon Fishery Act, 1873, relating to the formation, enlargement, combination, reduction or alteration of any fishery district have been complied with, and that such district has been duly formed, enlarged, combined, reduced or altered with the limits and in the manner specified in such certificate or certificates (g).

Evidence of proceedings at meetings.

Any minute made of proceedings at a meeting of a board of conservators, signed by the chairman of such meeting, or by the chairman of the next meeting of the board, shall be receivable in evidence in all legal proceedings without further proof; and until the contrary is proved, every meeting of the board in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified (h).

Bye-laws proved by copy having seal of board and publication in newspapers.

The production of a written or printed copy of any bye-law purporting to have been confirmed, authenticated by the common seal of the board, shall be conclusive evidence of the existence and due making of such bye-law in all legal proceedings, and the production of a copy of any newspaper or newspapers containing the notice of the making of any such bye-law shall be taken and received in all legal proceedings as evidence that all things required by the Salmon Fishery Act, 1873, for the making and publication of the bye-law therein advertised have been duly done, performed and published (i).

(f) 28 & 29 Vict. c. 121, s. 61.

(g) 36 & 37 Vict. c. 71, s. 8.

(h) Sect. 35.

(i) Sect. 45.

The provisions of the Documentary Evidence Act, 1868, shall apply to a scale of licences approved by the secretary of state in pursuance of the Salmon Fishery Act, 1865, or the Salmon Fishery Act, 1873, in the same manner as if such scale so approved as aforesaid were an order or regulation issued by such secretary of state, and the production of a copy of such scale of licences, purporting to be certified to be a correct copy of such scale, by any person empowered to certify the same in pursuance of the Documentary Evidence Act, shall be evidence that such scale has been approved of, and that all the steps required by the Salmon Fishery Act, 1865, or the Salmon Fishery Act, 1873, relating to the formation and approval of such scale have been taken (*h*).

Proof of
legality of
scale of
licences.

Nothing in the Salmon Fishery Acts contained shall prejudice the legal right of any conservators, directors, commissioners, undertakers, persons or body of persons corporate or unincorporate, to dredge, scour, cleanse or improve any navigable river, canal or other inland navigation (*i*).

Saving clause
for dredging.

From and after the commencement of the Salmon Fishery Act, 1861, there shall be repealed the several acts and parts of acts set forth in the schedule thereto, to the extent to which such acts or parts of acts are therein expressed to be repealed (*m*).

Repeal of
acts.

The eighteenth, nineteenth and thirty-fifth sections of the Salmon Fishery Act, 1861, and the fourteenth, twentieth, twenty-fourth and twenty-sixth sections, the first and second sub-sections of the thirty-fourth section, and the first schedule of the Salmon Fishery Act, 1865, are repealed by the Salmon Fishery Act, 1873, except so far as relates to anything done or in the course of being completed under the same respectively (*n*).

Provided that such repeal shall not affect—

1. Any security duly given before the Salmon Fishery Acts come into operation.
2. Anything duly done before the Salmon Fishery Acts come into operation.

(*h*) 36 & 37 Vict. c. 71, s. 64.

(*i*) 24 & 25 Vict. c. 109, s. 38.

(*m*) Sect. 39.

(*n*) 36 & 37 Vict. c. 71, s. 65.

LAW OF SALMON FISHERIES.

3. Any liability accruing before the Salmon Fishery Acts come into operation.
 4. Any penalty, forfeiture or other punishment incurred or to be incurred in respect of any offence committed before the Salmon Fishery Acts come into operation.
 5. The institution of any legal proceeding or any other remedy for ascertaining, enforcing or recovering any such liability, penalty, forfeiture or punishment as aforesaid (o).
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(o) 24 & 25 Vict. c. 109, s. 39.

APPENDIX I.

SALMON FISHERY ACTS.

. In this Appendix the Statutes are printed in full (repealed parts in *Italics*); the references to sections of the acts are to those that alter the sections; the references to pages refer to the page of this book.

	PAGE
24 & 25 Vict. c. 109 <i>The Salmon Fishery Act, 1861</i> ..	409
26 Vict. c. 10 .. <i>The Salmon Acts Amendment Act, 1863</i>	426
28 & 29 Vict. c. 121 <i>The Salmon Fishery Act, 1865</i> ..	427
33 & 34 Vict. c. 33 <i>The Salmon Acts Amendment Act, 1870</i>	447
36 Vict. c. 13 .. <i>An Act to discontinue the Office of Special Commissioners of Salmon Fisheries in England</i> ..	448
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THE SALMON FISHERY ACT, 1861.

24 & 25 VICT. C. 109.

An Act to amend the Laws relating to Fisheries of Salmon in England. [6th August, 1861.]

WHEREAS the salmon fisheries of England have of late years been greatly injured, and for the purpose of increasing the supply of salmon, it is expedient to amend the laws relating to fisheries of salmon in England: be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This act may be cited for all purposes as "The Salmon Short title. Fishery Act, 1861."

2. This act shall not extend to Scotland or Ireland, or to the River Tweed, as defined by "The Tweed Fisheries Amendment Act, 1859."

B.

T

Application
of act.
S.F. Act, 1865,
s. 63.
See p. 9.

Commence-
ment of act.

See p. 8.

Definition of
terms.

S. F. Act, 1865,

s. 4.

S. F. Act, 1873,

s. 4.

S. F. Act, 1865,

s. 64.

S. F. Act, 1873,

s. 18.

See p. 15.

See p. 225.

See p. 275.

See p. 16.

See p. 16.

See p. 146.

Repealed,

S. F. Act, 1873,

s. 4.

See p. 310.

See p. 315.

S. F. Act, 1861,

s. 11.

S. F. Act, 1865,

s. 39.

S. F. Act, 1873,

s. 4.

See pp. 14, 226.

S. F. Act, 1873,

s. 4.

See p. 12.

Penalty on
mixing
poisonous

3. This act shall not come into operation until the first day of October, one thousand eight hundred and sixty-one.

4. In this act, unless there is something inconsistent in the context, the words and expressions hereinafter mentioned shall have respectively the meanings hereby assigned to them; that is to say,

"Person" shall include any body of persons, corporate or unincorporate:

"Salmon" shall include all migratory fish of the genus salmon, whether known by the names hereinafter mentioned, that is to say, salmon, cock or kipper, kelt, laurel, girling, grilse, botcher, blue cock, blue pole, fork tail, mort, peal, herring peal, May peal, pugg peal, harvest cock, sea trout, white trout, sewin, bantling, guinad, tube, yellow fin, spred, herling, whiting, bull trout, whitling, scurf, barn tail, fry, samlet, smoult, smelt, skirling or scarling, parr, spawn, pink, last spring, hepper, last brood, gravelling, shed, scad, blue fin, black tip, fingerling, brandling, broodling, or by any other local name:

"Young of salmon" shall include all young of the salmon species, whether known by the names of fry, samlet, smolt, smelt, skirling or skarling, par, spawn, pink, last spring, hepper, last brood, gravelling, shed, scad, blue fin, black tip, fingerling, brandling, broodling, or by any other name, local or otherwise:

"Court" shall include two or more magistrates assembled in petty sessions:

"Tidal waters" shall include the sea, and all rivers, creeks, streams, and other water as far as the tide flows and reflows:

"Inland waters" shall mean all waters that are not tidal waters:

"Dam" shall mean all weirs and other fixed obstructions used for the purpose of damming up water:

"Fishing weir," shall mean a dam used for the exclusive purpose of catching or facilitating the catching of fish:

"Fishing mill dam" shall mean a dam used or intended to be used partly for the purpose of catching or facilitating the catching of fish, and partly for the purpose of supplying water for milling or other purposes:

"Fixed engine" shall include stake nets, bag nets, putts, putchers, and all fixed implements or engines for catching or for facilitating the catching of fish:

"Home Office" shall mean one of her majesty's principal secretaries of state.

LAW OF FISHING.

Prohibition of certain Modes of destroying Fish

5. Every person who causes or knowingly permits to flow, or puts or knowingly permits to be put, into any waters containing

salmon, or into any tributaries thereof, any liquid or solid matter to such an extent as to cause the waters to poison or kill fish, shall incur the following penalties; (that is to say.)

substances
in rivers.
Sec. p. 338.

- (1.) Upon the first conviction a penalty not exceeding five pounds:
- (2.) Upon the second conviction a penalty not exceeding ten pounds, and a further penalty not exceeding two pounds for every day during which such offence is continued:
- (3.) Upon the third or any subsequent conviction a penalty not exceeding twenty pounds a day for every day during which such offence is continued, commencing from the date of the third conviction:

S. F. Act, 1865,
s. 57.
S. F. Act, 1872,
s. 18, sub-s. 5.

But no person shall be subject to the foregoing penalties for any act done in the exercise of any right to which he is by law entitled, if he prove to the satisfaction of the court before whom he is tried that he has used the best practicable means, within a reasonable cost, to render harmless the liquid or solid matter so permitted to flow or to be put into waters; but nothing herein contained shall prevent any person from acquiring a legal right in cases where he would have acquired it if this act had not passed, or exempt any person from any punishment to which he would otherwise be subject, or legalize any act or default that would but for this act be deemed to be a nuisance or otherwise be contrary to law.

See p. 340.

8. Where any proceedings are instituted by any complainant against any person for the recovery of any penalties alleged to have been incurred by him under the last preceding section, if such person, hereinafter referred to as "the defendant," on appearing before the justices constituting the court by which he is to be tried in pursuance of this act, alleges, by way of defence, that he has used the best practicable means, within a reasonable cost, to render such matter harmless, and proves to the satisfaction of the court that in the event of the complaint being decided against him the expense of permanently preventing the matter complained of would, exclusive of costs, exceed one hundred pounds, and gives security, to be approved by such court, duly to prosecute his appeal and to abide the event thereof, all proceedings before the justices shall be stayed, and it shall be lawful for such complainant to bring an action in one of her Majesty's superior courts of law at Westminster against the defendant; and the plaintiff in such action shall deliver to the defendant an issue or issues whereby the question whether he has used the best practicable means, within a reasonable cost, to render such matter harmless may be tried; and the form of such issue or issues, in case of dispute, or in the case of non-appearance of the defendant, shall be settled by the court in which the action is brought, and such action shall be prosecuted and issue or issues tried in the same manner and subject to the same incidents in and subject to which actions are prosecuted and issues

Power to
have ques-
tion under
preceding
section de-
cided by jury.
See pp. 341,
378.

tried in other cases within the jurisdiction of such court, or as near thereto as circumstances admit.

Effect of
issue.

See p. 341.

7. The verdict of the jury on such issue shall, unless the court before which the same is tried orders a new trial, be conclusive as to the questions involved in any subsequent proceedings that may be had for the recovery of any penalties in pursuance of the said section, and any costs that may have been incurred before the justices by the parties to such action as is mentioned in this section shall be deemed to be costs incurred in such action, and be payable accordingly.

Penalty on
fishing with
lights, spears,
&c.

S. F. Act, 1865,
ss. 56, 57, 64.

S. F. Act, 1873,
s. 18, sub-ss. 4,
5, 7.

See p. 312.

8. No person shall do the following things or any of them; that is to say,

(1.) Use any light for the purpose of catching salmon:

(2.) Use any spear, gaff, strokehall, snatch, or other like instrument for catching salmon:

(3.) Have in his possession a light or any of the foregoing instruments under such circumstances as to satisfy the court before whom he is tried that he intended at the time to catch salmon by means thereof:

S. F. Act, 1873,

s. 39, sub-s. 9.

See pp. 94, 313.

And any person acting in contravention of this section shall incur a penalty not exceeding five pounds, and shall forfeit any instruments used by him or found in his possession in contravention of this section; but this section shall not apply to any person using a gaff as auxiliary to angling with a rod and line.

Penalty on
using roe as
a bait.

S. F. Act, 1865,
ss. 56, 57, 60,
64.

S. F. Act, 1873,
s. 18, sub-ss. 4,
5, 7.

See p. 214.

9. No person shall do the following things or any of them; that is to say,

(1.) Use any fish roe for the purpose of fishing:

(2.) Buy, sell, or expose for sale, or have in his possession, any salmon roe:

S. F. Act, 1873,
s. 18, sub-ss. 4,
5, 7.

See p. 214.

And any person acting in contravention of this section shall for each offence incur a penalty not exceeding two pounds, and shall forfeit all salmon roe found in his possession; but this section shall not apply to any person who uses or has in his possession salmon roe for artificial propagation or other scientific purposes, or gives any reason satisfactory to the court by whom he is tried for having the same in his possession.

Penalty on
using certain
nets.

S. F. Act, 1873,
s. 39, sub-s. 4.

See pp. 90,

214.

S. F. Act, 1865,
s. 57.

S. F. Act, 1873,
s. 18, sub-s. 5.

10. No person shall take or attempt to take salmon with any net having a mesh of less dimensions than two inches in extension from knot to knot (the measurement to be made on each side of the square), or eight inches measured round each mesh when wet; and any person acting in contravention of this section shall forfeit all nets and tackle used by him in so doing, and shall for each offence incur a penalty not exceeding five pounds; and the placing two or more nets behind or near to each other in such manner as to practically diminish the mesh of the nets used, or the covering the nets used with canvas, or the using any other artifice so as to evade the provisions of this section with respect to the mesh of nets, shall be deemed to be an act in contravention of this section.

Penalty on

11. No fixed engine of any description shall be placed or used

for catching salmon in any inland or tidal waters; and any engine placed or used in contravention of this section may be taken possession of or destroyed; and any engine so placed or used, and any salmon taken by such engine, shall be forfeited, and in addition thereto, the owner of any engine placed or used in contravention of this section shall, for each day of so placing or using the same, incur a penalty not exceeding ten pounds; and for the purposes of this section a net that is secured by anchors, or otherwise temporarily fixed to the soil, shall be deemed to be a fixed engine, but this section shall not affect any ancient right or mode of fishing as lawfully exercised at the time of the passing of this act by any person by virtue of any grant or charter or immemorial usage; provided always, that nothing in this section contained shall be deemed to apply to fishing weirs or fishing mill dams.

12. The following regulations shall be observed with respect to dams:

(1.) No dam except such fishing weirs and fishing mill dams as are lawfully in use at the time of the passing of this act, by virtue of a grant or charter or immemorial usage, shall be used for the purpose of catching or facilitating the catching of salmon:

1. Any person catching or attempting to catch salmon in contravention of this section shall incur a penalty not exceeding five pounds for each offence, and a further penalty not exceeding one pound for each salmon which he catches:
2. All traps, nets and contrivances used in or in connexion with the dam for the purpose of catching salmon shall be forfeited:
3. All salmon caught in contravention of the above prohibition shall be forfeited:

And no fishing weir, although lawfully in use as aforesaid, shall be used for the purposes of catching salmon unless it have therein such free gap as is hereinafter mentioned; and no fishing mill dam, although lawfully in use as aforesaid, shall be used for the purposes of catching salmon unless it have attached thereto a fish pass of such form and dimensions as shall be approved of by the home office, nor unless such fish pass has constantly running through it such a flow of water as will enable salmon to pass up and down such pass, but so nevertheless that such pass shall not be larger nor deeper than requisite for the above purposes:

(2.) No person shall catch or attempt to catch, except by rod and line, any salmon in the head race or tail race of any mill, or within fifty yards below any dam, unless such mill or dam has attached thereto a fish pass of such form and dimensions as may be approved by the home office, and such fish pass has constantly running through it such a flow of water as will enable salmon to pass up and down it; and if any person acts in contravention of the foregoing provision,

1. He shall incur a penalty not exceeding two pounds

placing or fixing fixed engines.
S. F. Act, 1865, s. 39.
S. F. Act, 1873, ss. 4, 18, sub-s. 2.
See pp. 225—272.
S. F. Act, 1865, s. 57.
S. F. Act, 1873, s. 18, sub-s. 5.

Penalty on using certain dams for catching salmon.
See pp. 146, 272, 316.

S. F. Act, 1865, s. 57.
S. F. Act, 1873, s. 18, sub-s. 5.

S. F. Act, 1873, s. 17.
See p. 217.

S. F. Act, 1865,
s. 57.
S. F. Act, 1873,
s. 18, sub-s. 5.

Penalty on
company or
person not
erecting
gratings to
prevent the
descent of
salmon into
artificial
streams.

S. F. Act, 1873,
s. 39, sub-s. 10,
Part IX. ss.
58—61.

See pp. 94, 173.

S. F. Act, 1865,
s. 57.

S. F. Act, 1873,
s. 18, sub-s. 5.

- for each offence, and a further penalty not exceeding one pound for every salmon so caught:
2. He shall forfeit all salmon caught in contravention of this section, and all nets or other instruments used or placed for catching the same.

13. Where salmon or the young of salmon are led aside out of a main stream by means of any artificial channel used for the purpose of supplying towns with water, or for supplying any navigable canal, the company or persons having the control over such artificial channel shall, within six months after the commencement of this act, put up and shall maintain, at their own costs and charges, a grating or gratings across such channel, for the purpose of preventing the descent of the salmon or the young of salmon, and such grating or gratings shall be placed in such form and manner as may be approved by one of the inspectors in this act mentioned; and any company or persons failing to put a grating or gratings in cases where they are required to do so by this section shall incur a penalty not exceeding five pounds for every day after the expiration of such period of six months during which he fails to comply with the provisions of this section; and any such company or person failing so to maintain the same shall incur a penalty not exceeding one pound for every day during which such failure continues: provided always, that no such grating shall be so placed as to interfere with the passage of boats on any navigable canal.

Prohibition of the Destruction of unseasonable Fish.

Penalty on
taking un-
clean fish.

S. F. Act, 1873,
s. 18, sub-s. 2,
8.

See p. 334.

S. F. Act, 1865,
ss. 56, 57.

S. F. Act, 1873,
s. 18, sub-s. 4,
6.

14. No person shall do any of the following things; that is to say,

- (1.) Wilfully take any unclean or unseasonable salmon:
- (2.) Buy, sell, or expose for sale, or have in his possession, any unclean or unseasonable salmon, or any part thereof:

And any person acting in contravention of this section shall incur the following penalties; that is to say,

- (1.) He shall forfeit any fish taken, bought, sold, or exposed for sale, or in his possession:
- (2.) He shall incur a penalty not exceeding five pounds in respect of each fish taken, sold, or exposed for sale, or in his possession:

But this section shall not apply—

- (1.) To any person who takes such fish accidentally, and forthwith returns the same to the water with the least possible injury:
- (2.) To any person who takes or is in possession of such fish for artificial propagation or other scientific purposes.

S. F. Act, 1865,
s. 60.

Penalty on
taking the
young of
salmon.

15. No person shall do the following things or any of them; that is to say,

- (1.) Wilfully take or destroy the young of salmon:

- (2.) Buy, sell, or expose for sale, or have in his possession, *See p. 335.*
the young of salmon :
- (3.) Place any device for the purpose of obstructing the passage of the young of salmon :
- (4.) Wilfully injure the young of salmon : *S. F. Act, 1865, s. 57.*
- (5.) Wilfully disturb any spawning bed, or any bank or shallow on which the spawn of salmon may be : *S. F. Act, 1873, s. 18, sub-s. 5.*

And any person acting in contravention of this section shall incur the following penalties; that is to say,

- (1.) He shall forfeit all the young of salmon found in his possession :
- (2.) He shall forfeit all rods, lines, nets, devices, and instruments used in committing any of the above offences :
- (3.) He shall for each offence pay a penalty not exceeding five pounds..

But nothing herein contained shall apply to any person who may have obtained such young of salmon for artificial propagation or other scientific purposes, and nothing herein contained shall prejudice the legal right of any owner to take materials from any stream. *S. F. Act, 1865, s. 60.*

16. If any person wilfully disturbs or attempts to catch salmon when spawning, or when on or near their spawning beds, he shall for each offence incur a penalty not exceeding five pounds; but this section shall not apply to any person who may catch or attempt to catch salmon for the purposes of artificial propagation or other scientific purposes. *Penalty on disturbing fish when spawning. See p. 337. S. F. Act, 1865, s. 60.*

Restrictions as to Times of Fishing.

17. No person shall fish for, catch, or attempt to catch or kill salmon between the days hereinafter mentioned (which interval is herein referred to as the close season); that is to say, between the first day of September and the first day of February following, both inclusive, except only that it shall be lawful to fish with a rod and line between the first day of September and the first day of November following, both inclusive; and any person acting in contravention of this section shall forfeit any salmon caught by him, and shall in addition thereto incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds in respect of each salmon so caught. *Close time. S. F. Act, 1865, ss. 56, 57, 58. S. F. Act, 1873, s. 39, sub-s. 1. See pp. 38, 185. S. F. Act, 1873, s. 18, sub-ss. 4, 5.*

18. The home office may, upon the application of the justices in quarter sessions assembled of any county abutting on water containing salmon, extend or vary the time during which it is prohibited to take salmon in such waters; any such application shall be forwarded to the home office by the chairman of such justices, but it shall not be entertained by the home office until due proof is given that notice of such application has been served on the clerk of the peace of every county abutting on such river other than the county from the justices of which the application proceeds, and that a copy of such notice has been published in every county abutting on such river by advertisement once at least in each of four successive weeks in *Power of home office to extend or vary close season. S. F. Act, 1865, s. 34. Repealed, S. F. Act, 1873, s. 65. See pp. 38, 185.*

some local newspaper; the extension of such time as aforesaid by the home office shall be made by order under the hand of one of her majesty's principal secretaries of state, and a copy of the London Gazette containing such order shall be evidence of the same having been made.

For the purposes of this section any riding or other division of a county having a separate court of quarter sessions shall be deemed a separate county, and any penalties imposed by this act for the purpose of prohibiting the killing of fish during the close time shall apply to such extended close time; and the home office may from time to time vary the close time so extended.

Penalty on
selling fish
during close
time.

Repealed,
S. F. Act, 1873,
s. 65.

S. F. Act, 1873,
s. 19.

See p. 187.

19. No person shall buy, sell, or expose for sale, or have in his possession for sale, any salmon between the third day of September and the second day of February following; and any person acting in contravention of this act shall forfeit any fish so bought, sold or exposed for sale, or in his possession for sale, and shall incur a penalty not exceeding two pounds for each such fish; but this section shall not apply to any person buying, selling or exposing for sale, or having in his possession for sale, salmon cured, pickled or dried, or any fresh salmon caught beyond the limits of this act, nevertheless the burden of proving any fresh salmon that is sold or exposed, or in the possession of any person for sale between the said third day of September and the said second day of February to have been caught beyond the limits of this act shall lie on the person selling or exposing the same for sale, or having the same in his possession for sale.

Removal of
fixed engines
during close
time.

See p. 191.

20. The proprietor or occupier of every fishery for salmon shall, within thirty-six hours after the commencement of the close season, cause to be removed and carried away from the waters within his fishery the inscales, hecks, tops and rails of all cruives, boxes or cribs, and all planks and temporary fixtures used for taking or killing salmon, and all other obstructions to the free passage of fish in or through the cruives, cribs and boxes within his fishery; and if any proprietor or occupier omits to remove and carry away in manner aforesaid any things hereby required to be removed and carried away he shall incur the following penalties; (that is to say,)

S. F. Act, 1866,
s. 57.

S. F. Act, 1873,
s. 18, sub-s. 5.

(1.) He shall forfeit all the engines or other things that are not removed and carried away in compliance with this section:

(2.) He shall, for every day during which he suffers such things to remain unremoved beyond the period prescribed by this act, pay a sum not exceeding ten pounds.

Weekly close
time.

S. F. Act, 1873,
s. 39, sub-s. 2.

See p. 196.

21. No person shall fish for, catch or kill by any means other than a rod and line, any salmon between the hour of twelve of the clock at noon on Saturday and the hour of six of the clock on Monday morning; and any person acting in contravention of this section shall forfeit all fish taken by him, and any net or moveable instrument used by him in taking the same, and is

addition thereto shall incur a penalty not exceeding five pounds, and a further penalty not exceeding one pound in respect of each fish so taken between twelve of the clock at noon on Saturday and six of the clock on Monday morning; but nothing in this section contained shall compel the owner of any putts or putchers to remove or draw up the same during such time as is mentioned in this section, or subject him to a penalty, so that he lets down a net in such manner or uses such other device as the home office approves for the purpose of preventing salmon passing into the putts or putchers during such time as aforesaid.

22. The proprietor or occupier of every fishery shall, between twelve of the clock at noon on Saturday and six of the clock on the Monday morning following, maintain a clear opening, of not less than four feet in width from the bottom to the top, through all cribs, boxes or cruives used for taking salmon within his fishery, so that a free space of that width is effectually secured for the passage of fish up and down through each box, crib or cruiue, whether used for the purpose of fishing or not; and shall, for the purpose of maintaining such opening, remove the inscales and rails of all such boxes, cribs or cruives; and any person acting in contravention of this section shall incur the following penalties:

- (1.) He shall for each offence pay a sum not exceeding five pounds, and a further penalty not exceeding one pound for each fish so taken:
- (2.) He shall forfeit every fish caught in contravention of this section.

Fish Passes.

23. Any proprietor of a fishery with the written consent of the home office may attach to every dam existing at the time of the passing of this act a fish pass, of such form and dimensions as the home office may approve, so that no injury be done to the milling power or to the supply of water to or of any navigable river, canal or other inland navigation by such fish pass; and any person obstructing any person legally authorized in erecting or doing any necessary act to erect or maintain such fish pass shall incur a penalty not exceeding ten pounds for each act of obstruction; and any person injuring such fish pass shall pay the expense of repairing the injury, such expense to be recovered in a summary manner, and, in addition thereto, if such injury is wilful, shall incur a penalty not exceeding five pounds; and any person doing any act for the purpose of preventing salmon from passing through a fish pass, or taking any salmon in its passage through the same, shall incur a penalty not exceeding five pounds for a first offence, and not exceeding ten pounds for each subsequent offence, and shall forfeit any salmon taken by him in contravention of this section, and any instrument used by him in taking the same: provided that if any injury is done to any dam by reason of the affixing of a fish pass in pursuance of this section,

*S. F. Act, 1865,
s. 57.
S. F. Act, 1873,
s. 18, sub-s. 5.*

A free passage to be left through cribs or traps during weekly close time.

See p. 198.

*S. F. Act, 1865,
s. 57.
S. F. Act, 1873,
s. 18, sub-s. 5.*

Proprietor, with consent of home office, may attach fish passes to existing dams.

*S. F. Act, 1865,
ss. 32, 59.
S. F. Act, 1873,
s. 53.*

*See pp. 149,
163.*

*S. F. Act, 1865,
s. 57.
S. F. Act, 1873,
s. 18, sub-s. 5.*

any person sustaining any loss thereby may recover compensation for such injury in a summary manner from the person or body of persons by whom such fish pass has been affixed.

Notice required before home office gives consent.

See p. 156.

24. The home office shall not give their consent to the attachment by a proprietor of a fish pass to any dam, in pursuance of the last preceding section, unless such proprietor proves, to the satisfaction of the home office, that he has served notice on the owner of such dam of his intention to apply for such consent, and at the same time has furnished him with plan and specification of the fish pass which he proposes to erect, a reasonable time before his application; and it shall be lawful for such owner to urge any objections he may think fit to the home office against their giving their consent, and the home office shall take any objections so made into consideration before they give their consent to the attachment of the fish pass.

Fish passes to be attached to future dams.

S.F. Act, 1873,
s. 46.

See p. 150.

S.F. Act, 1865,

s. 57.

S.F. Act, 1873,

s. 18, sub-s. 5.

25. Every person who, after the passing of this act, in waters where salmon are found, constructs a new dam, or raises or alters, so as to create increased obstruction to fish, a dam already constructed, shall attach and maintain attached thereto in an efficient state a fish pass of such form and dimensions as may be determined by the home office, and if he do not, such person shall incur a penalty not exceeding five pounds; and it shall be lawful for the home office to cause to be done any work by this section required to be done by such person, and to recover the expense of doing the same in a summary manner from the person in default; but this section shall not authorise anything to be done which may injuriously affect any navigable river, canal, or inland navigation, nor shall anything in this or the last preceding section prevent any person from removing a fish pass for the purpose of repairing or altering a dam, so that within a reasonable time he restore such fish pass in as an efficient a state as it was before he removed the same.

Supply of water to fish passes.

S.F. Act, 1873,
s. 53.

See p. 153.

26. Where a fish pass is attached to any dam in pursuance of this act, the sluices, if any, for drawing off the water which would otherwise flow over the dam shall be kept shut at all times when the water is not required for milling purposes in such manner as to cause such water to flow through the fish pass; and any person making default in complying with the requisitions of this section shall incur a penalty not exceeding five shillings per hour for every hour during which such default continues; but this section shall not preclude any person from opening a sluice for the purpose of letting off water in cases of flood, or for milling purposes, or when necessary for the purposes of navigation, or for cleaning or repairing any dam or mill or the appurtenances thereof.

S.F. Act, 1865,
s. 57.

S.F. Act, 1873,
s. 18, sub-s. 5.

Construction of free gaps.

S.F. Act, 1873,
s. 4.

See p. 311.

Restrictions as to Fishing Weirs.

27. Where any fishing weir extends more than halfway across any stream at its lowest state of water, it shall have a free gap or opening in accordance with the regulations following, unless

otherwise authorized by the home office, under the powers of this act; that is to say,

- (1.) The free gap shall be situate in the deepest part of the stream between the points where it is intercepted by the weir:
 - (2.) The sides of the gap shall be in a line with and parallel to the direction of the stream at the weir:
 - (3.) The bottom of the gap shall be level with the natural bed of the stream above and below the gap:
 - (4.) The width of the gap in its narrowest part shall be not less than one tenth part of the width of the stream; provided always, that such gap shall not be required to be wider than forty feet, and shall not in any case be narrower than three feet.
28. The following rules shall be observed for the purpose of enforcing efficient free gaps in fishing weirs; that is to say,
- (1.) Where a weir is without a legal free gap at the time of the commencement of this act the owner of such weir shall within twelve months after the commencement of this act make such a gap, and if he does not he shall incur a penalty not exceeding five pounds for every day after the expiration of such period of twelve months during which he does not make such gap:
 - (2.) Where a free gap has been made in a weir, but the same is not maintained in accordance with this act, the owner of such weir shall incur a penalty not exceeding one pound a day for each day he is in default:
 - (3.) No alteration shall be made in the bed of any river in such manner as to reduce the flow of water through a free gap; if it is, the person making the same shall incur a penalty not exceeding five pounds, and a further penalty of one pound a day until he restores the bed of the river to its original state:
 - (4.) No person shall place any obstruction, use any contrivance, or do any act whereby fish may be scared, deterred, or in any way prevented from freely entering and passing up and down a free gap at all periods of the year; and any person placing any obstruction, using any contrivance, or doing any act in contravention of the regulation lastly hereinbefore contained shall incur a penalty not exceeding five pounds for the first offence, and not exceeding ten pounds for each subsequent offence; but this last regulation shall not apply to a temporary bridge or board used for crossing the free gap, and taken away immediately when a person has crossed the same.
29. The following rules shall be observed in relation to the construction of boxes and cribs in fishing weirs and fishing mill dams; that is to say,
- (1.) The upper surface of the sill shall be level with the bed of the river:

Enforcing
free gaps in
fishing weirs.
See p. 312.

*S. F. Act, 1865,
s. 57.
S. F. Act, 1873,
s. 18, sub-s. 5.*

Construction
of boxes and
cribs in fish-
ing weirs and
fishing mill
dams.
*See pp. 313,
316.*

- (2.) The bars or inscales of the heck or upstream side of the box or crib shall not be nearer each other than two inches, and shall be capable of being removed and shall be placed perpendicularly:

S.F. Act, 1865, s. 57.
S.F. Act, 1873, s. 18, sub-s. 5.
 And the owner of any fishing weir or fishing mill dam that has attached thereto any box or crib in contravention of this act shall bring the same into conformity with this act within six months after the commencement of this act; and he shall incur a penalty not exceeding five pounds for every day after the expiration of such period of six months during which he fails to comply with the provisions of this section; and any owner failing so to maintain the same shall incur a penalty not exceeding one pound for every day during which such failure continues.

Construction of spur walls in fishing weirs or fishing mill dams.

See pp. 314, 316.
S.F. Act, 1865, s. 57.
S.F. Act, 1873, s. 18, sub-s. 5.

General superintendence of fisheries by home office.
See pp. 361, 362.

Annual reports of inspectors to be laid before parliament.
See p. 362.

Justices at sessions to appoint conservators of rivers.
S.F. Act, 1865, s. 17.

See p. 32.
 Justice may grant a warrant to enter suspected places.
See p. 106.

30. There shall not be attached to any box or crib in any fishing weir or fishing mill dam any spur or tail wall, leader, or outrigger of a greater length than twenty feet from the upper or lower side of such box or crib; and if any box or crib in any fishing weir or fishing mill dam has any walls, leaders, or outriggers in contravention of this section, the owner of the weir or fishing mill dam shall incur a penalty not exceeding one pound for every day during the continuance thereof.

CENTRAL AUTHORITY.

31. The general superintendence of the salmon fisheries throughout England shall be vested in the home office, and it shall be lawful for the home office to appoint two inspectors of fisheries for three years, to assign to them their duties, and to pay to them such salaries as may from time to time be determined by the commissioners of her majesty's treasury.

The home office may from time to time remove the said inspectors, and appoint other persons in their stead.

32. The home office shall annually lay before parliament reports from the inspectors, which reports shall contain as far as may be practicable a statistical account of the fisheries, with such other information as may be collected, and suggestions offered for their regulation and improvement.

33. It shall be lawful for the justices of the peace assembled at any general or quarter sessions of the peace from time to time to appoint conservators or overseers for the preservation of salmon, and enforcing for that purpose the provisions of this act within the limits of the jurisdiction of such justices.

34. It shall be lawful for any justice of the peace, upon information on oath that there is probable cause to suspect any breach of the provisions of this act to have been committed on any premises, or any salmon illegally taken or any illegal nets or other engines to be concealed on any premises, by warrant under his hand and seal, to authorize and empower any inspector, water bailiff, conservator, constable, or police officer to enter such premises for the purposes of detecting such offence, or such concealed fish, at such time or times, in the day or night, as in such warrant may be mentioned, and to seize all illegal engines, or

any salmon illegally taken, that may be found on such premises; provided that no such warrant shall continue in force for more than one week from the date thereof.

LEGAL PROCEEDINGS.

35. *All penalties imposed by this act, and all costs or expenses by this act directed to be recovered in a summary manner, may be recovered, within six months after the commission of the offence, before two justices, in manner directed by an act passed in the eleventh and twelfth years of the reign of her present majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the Performance of the Duties of the Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders," or of any act amending the same; and all monies received in respect of penalties recovered under the act shall be paid as follows; that is to say,*

Such portion not exceeding one-half, as the court may think fit, to the person on whose complaint the penalty is recovered and the remainder in manner directed by the said act of eleventh and twelfth years of the reign of her present majesty Victoria, chapter forty-three; and all forfeitures shall be disposed of as the court may direct, and the proceeds, if any, shall be applied in manner in which the monies received in respect of penalties are hereby directed to be applied.

36. Where any offence under this act is committed in or upon any waters forming the boundary between any two counties, districts of quarter sessions or petty sessions, such offence may be prosecuted before any justice or justices of the peace in either of such counties or districts.

37. Any offence committed under this act, on the sea coast or at sea, beyond the ordinary jurisdiction of any justice of the peace, shall be deemed to have been committed within the body of any county abutting on such sea coast or adjoining such sea, and may be tried and punished accordingly.

38. Nothing in this act contained shall prejudice the legal right of any conservators, directors, commissioners, undertakers, persons, or body of persons corporate or unincorporate to dredge, scour, cleanse, or improve any navigable river, canal, or other inland navigation.

REPEAL OF ACTS.

39. From and after the commencement of this act there shall be hereby repealed the several acts and parts of acts set forth in the schedule hereto, to the extent to which such acts or parts of acts are therein expressed to be repealed: provided that such repeal shall not affect—

1. Any security duly given before this act comes into operation:
2. Anything duly done before this act comes into operation:

Recovery of penalties.
Repealed,
S. F. Act, 1873,
ss. 62, 65.
See p. 373.

S. F. Act, 1865,
s. 62.
S. F. Act, 1873,
s. 62.
See p. 374.

Offences on rivers may be tried in county on either side.
See p. 379.

Offences committed on sea coast where to be tried.
See p. 379.

Saving clause for dredging.
See p. 400.

Repeal of acts.
S. F. Act, 1873,
s. 65.
See p. 400.

3. Any liability accruing before this act comes into operation:
4. Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before this act comes into operation:
5. The institution of any legal proceeding or any other remedy for ascertaining, enforcing, or recovering any such liability, penalty, forfeiture, or punishment as aforesaid.

SCHEDULE.

Reference to Act.	Title of Act.	Extent of Repeal.
13 Edw. 1, stat. 1, c. 47.	A Penalty for taking of Salmon at certain Times of the Year.	The whole act.
25 Edw. 3, stat. 4, c. 4.	"New Weirs shall be pulled down and not repaired."	The whole act.
45 Edw. 3, c. 2.	The Penalty of him that setteth up or encloseth Wares.	The whole act.
13 Rich. 2, stat. 1, c. 19.	A Confirmation of Stat. 13 Edw. 1, Stat. 1, c. 47.	The whole act.
17 Rich. 2, c. 9.	Justices of Peace shall be Conservators of the Statutes made touching Salmon.	The whole act.
1 Hen. 4, c. 12.	A Confirmation of former Statutes touching pulling down of Wears.	The whole act.
4 Hen. 4, c. 11.	Commissions shall be awarded to Justices, &c. to inquire of Wears and Kidels, &c.	The whole act.
2 Hen. 6, c. 15.	No Man shall fasten Nets to anything over Rivers.	The whole act.
12 Edw. 4, c. 7.	An Act for the taking away Wears and Fishgarthes.	The whole act.
11 Hen. 7, c. 5.	Every Man may pull down the Wears and Engines in the Haven of Southampton, &c.	The whole act.
14 & 15 Hen. 8, c. 13.	A Confirmation of the Statute 11 Hen. 7, c. 5, and the same made perpetual.	The whole act.
23 Hen. 8, c. 18.	For pulling down Piles and Fishgarths in the Rivers Ouse and Humber.	The whole act.
1 Eliz. c. 17.	An Act for the Preservation of Spawn and Fry of Fish.	In so far as it relates to Salmon.
3 Car. 1, c. 4.	An Act for Continuance and Repeal of divers Statutes.	The first section of the act.
3 Jas. 1, c. 12.	An Act for the better preservation of Sea Fish.	The whole act.
30 Car. 2, c. 9.	An Act for the better Preservation of Fishing in the River of Severn.	The whole act.

Reference to Act.	Title of Act.	Extent of Repeal.
4 Ann, c. 21 . .	An Act for the Increase and better Preservation of Salmon and other Fish in the Rivers within the Counties of Southampton and Wiltshire.	The whole act.
9 Ann, c. 26 . .	An Act for the better Preservation and Improvement of Fishery within the River of Thames, and for regulating and governing the Company of Fishermen of the said River.	The second section of the act.
1 Geo. 1, stat. 2, c. 18.	An Act for the better preventing Fresh Fish taken by Foreigners being imported into this Kingdom, and for the Preservation of the Fry of Fish, and for the giving Leave to import Lobsters and Turbets in Foreign Bottoms, and for the better Preservation of Salmon within several Rivers in that Part of this Kingdom called England.	Sects. 11 to 16 inclusive.
23 Geo. 2, c. 26 .	An Act to continue several Laws for the better Regulation of Pilots for the conducting of Ships and Vessels from Dover, Deal, and Isle of Thanet up the River of Thames and Medway, and for permitting Rum or Spirits of the British Sugar Plantations to be landed before the Duties of Excise are paid thereon, and to continue and amend an Act for preventing Frauds on the Admeasurement of Coals within the City and Liberty of Westminster and several Parishes near thereunto, and to continue several Laws for preventing Exactions of Occupiers of Locks and Wears upon the River Thames westward, and for ascertaining the Rates of Water Carriage upon the said River, and for the better Regulation and Government of Seamen in the Merchants Service; and also to amend so much of an Act made in the First Year of the Reign of King George the First as relates to the better Preservation of Salmon in the River Ribble, and to regulate Fees in Trials at Assizes and Nisi Prius upon Records issuing out of the Office of Pleas of the Court of Exchequer, and for the apprehending of Persons in any County or Place upon	Sects. 7, 8 & 9.

Reference to Act.	Title of Act.	Extent of Repeal.
	Warrant granted by Justices of the Peace in any other County or place, and to repeal so much of an Act made in the 12th Year of the Reign of King Charles the Second as relates to the Time during which the Office of Excise is to be kept open each Day, and to appoint for how long Time the same shall be kept open upon each Day for the future, and to prevent the dealing or destroying of Turnips, and to amend an Act made in the Second Year of His present Majesty for better Regulation of Attorneys and Solicitors.	
83 Geo. 2, c. 27 .	An Act to repeal so much of an Act passed in the Twenty-ninth Year of His present Majesty's Reign concerning a free Market for Fish at Westminster, as requires Fishermen to enter their Fishing Vessels at the Office of the Searcher of the Customs at Gravesend, and to regulate the Sale of Fish at the First Hand in the Fish Markets in London and Westminster, and to prevent Salesmen of Fish buying Fish to sell again on their own Account, and to allow Biet and Turbot, Brill and Pear, although under the respective Dimensions mentioned in a former Act, to be imported and sold, and to punish any Persons who shall take or sell any Spawn, Brood, or Fry of Fish, unsizeable Fish, or Fish out of Season, or Smelts under the size of Five Inches, and for other Purposes.	Sect. 13.
18 Geo. 3, c. 83 .	An Act for the better Preservation of Fish and regulating the Fisheries in the Rivers Severn and Verniew.	In so far as it relates to Salmon.
37 Geo. 3, c. 95 .	An Act to amend Two Acts made in the Fourth Year of the Reign of Queen Anne and the First Year of the Reign of King George the First, for the Preservation of Salmon and other Fish in the Rivers within the Counties of Southampton and Wilts.	In so far as it relates to Salmon.
58 Geo. 3, c. 43 .	An Act for preventing the Destruction of the Breed of Salmon and Fish of Salmon Kind in the Rivers of England.	The whole act

Reference to Act.	Title of Act.	Extent of Repeal.
6 & 7 Vict. c. 33	An Act to repeal so much of an Act of the First Year of King George the First as limits the Time for taking and being restrained from taking Salmon in certain Rivers, and to amend and extend the Provisions of an Act of the Fifty-eighth Year of King George the Third to the Rivers therein mentioned.	The whole act.
11 & 12 Vict. c. 52	An Act to explain the Acts for preventing the Destruction of the Breed of Salmon and Fish of the Salmon Kind.	The whole act.

Private Acts relating to Salmon Fisheries.

—	Rivers affected.	Extent of Repeal.
43 Geo. 3, c. 61	Teign, Dart, and Plym, Devon .	The whole act.
44 Geo. 3, c. 45	Rivers flowing into the Solway Firth .	The whole act, except in so far as it relates to Scotland, and to fish other than Salmon in England.
45 Geo. 3, c. 33	Carmarthenshire Rivers	The whole act.
46 Geo. 3, c. 19	Rivers running into Milford Harbour .	In so far as it relates to Salmon.
49 Geo. 3 c. 2	Lord Lonsdale's Fisheries in Derwent .	The whole act.
5 & 6 Vict. c. 63	Tyne	The whole act.
21 & 22 Vict. c. 141	Tees	So much of Sects. 63 & 64 as relates to the making of bye-laws for the regulation of Salmon fisheries.

THE SALMON ACTS AMENDMENT ACT, 1863.

26 VICT. c. 10.

An Act for prohibiting the Exportation of Salmon at certain Times.
[20th April, 1863.]

24 & 25 Vict.
c. 109.

25 & 26 Vict.
c. 97.

22 & 23 Vict.
c. lxx.

WHEREAS the sale of salmon within the united kingdom is prohibited at various times; that is to say, if caught in England within the limits of the Salmon Fishery Act, 1861, is prohibited between the third day of September and the second day of February; if caught in any fishery district in Ireland is prohibited during such time as the capture of salmon is prohibited in that district; if caught in Scotland within the limits of "The Salmon Fisheries (Scotland) Act, 1862," is prohibited between the commencement of the latest and the termination of the earliest annual close time fixed for any district; if caught in the River Tweed, as defined by "The Tweed Fisheries Amendment Act, 1859," is prohibited between the fourteenth day of September and the fifteenth day of February: and whereas the capture or possession of foul or unseasonable salmon within the limits of the united kingdom is prohibited at all times: and whereas the provisions of the said acts are evaded by the exportation for sale in France and other foreign countries of salmon that cannot legally be sold within the limits of the united kingdom: be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Short title.
See p. 6.

"Parts beyond seas" defined.

See p. 16.

Export of unclean or unseasonable salmon, or salmon caught at certain times, prohibited.

33 & 34 Vict.
c. 33, s. 3.

See p. 201.

1. This act may be cited for all purposes as "The Salmon Acts Amendment Act, 1863."

2. No part of the united kingdom, however situated with regard to any other part, shall be deemed for the purposes of this act to be parts beyond seas.

3. No unclean or unseasonable salmon, and no salmon caught during the time at which the sale of salmon is prohibited in the district where it is caught, shall be exported or entered for exportation from any part of the united kingdom to parts beyond seas.

All salmon exported or entered for exportation in contravention of this section shall be forfeited, and the person exporting or entering the same for exportation shall be subject to a penalty not exceeding five pounds in respect of each salmon so exported or entered for exportation.

The burden of proving that any salmon entered for exportation from any part of the united kingdom to parts beyond seas between the third day of September and the *second day of February* following is not so entered in contravention of this act shall lie on the person entering the same for exportation.

4. All penalties under this act may be recovered in England,

Recovery of penalties.

except within the limits of the said Tweed Fisheries Act, as penalties under the Salmon Fishery Act, 1861; in Ireland as penalties under the act passed in the session of the fifth and sixth years of the reign of her present majesty, chapter one hundred and six, intituled "An Act to regulate the Irish Fisheries;" in Scotland, except within the limits of the said Tweed Fisheries Act, as penalties under "The Salmon Fisheries (Scotland) Act, 1862;" and within the limits of the said Tweed Fisheries Act, in manner prescribed by "The Tweed Fisheries Act, 1857." See p. 375.

THE SALMON FISHERY ACT, 1865.

28 & 29 VICT. C. 121.

An Act to amend "The Salmon Fishery Act, 1861."

[5th July, 1865.]

Whereas by the thirty-third section of "The Salmon Fishery Act, 1861," it is provided that it shall be lawful for the justices of the peace assembled at any general or quarter sessions of the peace from time to time to appoint conservators or overseers for the preservation of salmon, and enforcing for that purpose the provisions of the said act within the limits of the jurisdiction of such justices: and whereas no funds are provided by the said act for carrying into effect the purposes thereof, and no provisions are made for securing the co-operation of the conservators of different counties where a river frequented by salmon borders on or passes through several counties: and whereas it is expedient to amend the said act in respect of the foregoing particulars, and it is also expedient to make further provisions for the removal of illegal fixed engines, and otherwise to amend the said act: be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

24 & 25 Vict.
c. 109.

Preliminary.

1. This act may be cited for all purposes as "The Salmon Fishery Act, 1865," and this act and the Salmon Fishery Act, 1861, may be cited together as "The Salmon Fishery Acts, 1861 and 1865." Short title.
S. F. Act,
1873, s. 1.
See p. 6.
2. This act, so far as is consistent with the tenor thereof, shall be read as one with the Salmon Fishery Act, 1861. Construction
of act.
S. F. Act, 1873,
s. 2.
See p. 9.
3. In this act and the Salmon Fishery Act, 1861, the following words shall have the meanings hereinafter assigned to them, unless there be something in the subject or the context repugnant to such construction; that is to say,
 "River" shall include such portion of any stream or lake, with its tributaries, and such portion of any estuary, sea, or Definition of
terms.
S. F. Act,
1873, s. 4.
See pp. 12—
16.

sea coast, as may from time to time be declared, in manner hereinafter provided, to belong to such river:

"Salmon river" shall mean any river as above defined frequented by salmon or young of salmon:

"Quarter sessions" shall include "general sessions."

Any riding, division, or liberty of a county having a separate court of quarter sessions shall, for the purposes of this act, be deemed to be a county.

Appointment of Conservators.

Power to justices of county to apply for formation of fishery districts.

See p. 17.

S. F. Act, 1865, s. 38.

Limits of river and of fishery district, how settled.

See p. 20.

S. F. Act, 1865, s. 38.

Appointment of conservators to district within limits of one county.

See p. 36.

Committee for fishery district in different counties.

S. F. Act, 1865, s. 38.

See p. 36.

Application for appointment of joint committee.

4. The justices of a county at any court of quarter sessions held after the passing of this act (due notice having been previously given according to the practice of the said sessions) may, by writing under the hand of their chairman, apply to one of her majesty's principal secretaries of state to form into a fishery district or districts all or any of the salmon rivers lying wholly or partly within their county, and the said secretary of state may form such district or districts accordingly, and may include in any district so formed any river or rivers, or parts thereof, although not situated in the county on behalf of which the application is made.

5. The limits of a river shall be defined for the purposes of this act, and a fishery district shall be formed, by a certificate under the hand of one of her majesty's principal secretaries of state, describing the limits of the river or district by a reference to a map or otherwise, as to the said secretary may appear expedient, but no such certificate shall be granted unless one month's previous notice of the intention of the said secretary to grant the same, and of the intended limits of the river or district, has been given by advertisement in such newspaper or newspapers published or circulating within the intended limits, and in such daily morning newspaper or newspapers published in London, as may be directed by the said secretary of state, and when a certificate has been granted a copy shall be advertised in such newspaper or newspapers.

6. Where any fishery district lies wholly within any one county, the justices of that county in quarter sessions assembled shall appoint a board of conservators for that district, and shall name the time and place at which the first meeting of any board so appointed is to be held.

7. Where a fishery district does not lie wholly within the limits of one county, the justices of any county within which any part of such district lies, assembled at any court of quarter sessions, may apply to the justices of every other county in that district to appoint at their next court of quarter sessions a fishery committee of three of their number, to form, with the fishery committee of the like number to be appointed at that sessions by the county making the application, a joint fishery committee for the district.

8. An application under this act by the justices of one county to the justices of another, in respect of the appointment of a

joint fishery committee, shall be made by the clerk of the peace of the one county sending, within fourteen days after the holding of the sessions at which the application is resolved on, to the clerk of the peace of the other county, by post, a letter requiring the justices of the other county to appoint a fishery committee at their then next ensuing quarter sessions, and it shall be the duty of the clerk of the peace making the application, and of the clerk of the peace of every county to whom such application is sent, to add to the notice required by law to be given of the holding of such last-mentioned sessions a notice of the appointment proposed to be made of a fishery committee.

*See p. 36.
S. F. Act, 1865,
s. 36.*

9. At the quarter sessions mentioned in the application the justices of each county shall appoint a fishery committee of three of their members; and any county neglecting to make such appointment shall be deemed to have concurred in any decision that may be arrived at by the fishery committees of the other counties, or of such of them as may appoint a fishery committee.

*Appointment
of fishery
committee.
S. F. Act, 1865,
s. 36.
See p. 37.*

10. The clerk of the peace of every county shall, as soon as possible after the appointment of a fishery committee by his county, give notice by post to the clerk of the peace of every other county in the district, stating in such notice the names and addresses of the members composing the fishery committee of his county, and the clerk of the peace of the county that made the application for such appointment shall, in the notice sent by him, name a time and place at which the joint fishery committee for such district is to meet.

*Notice of ap-
pointment of
fishery com-
mittee.
S. F. Act, 1865,
s. 36.
See p. 37.*

11. The said joint fishery committee, on meeting at the time and place aforesaid, shall elect a chairman, and the chairman elected at the first meeting shall, if he is present at the time appointed for holding any other meeting, be chairman of that meeting; if he is not so present, the members present may choose any one of their number present to be chairman of such last-mentioned meeting.

*Proceedings
of joint
fishery com-
mittee.
See p. 37.*

A joint fishery committee may adjourn from time to time and from place to place, and one-third of the whole number of members appointed shall be a quorum.

See p. 38.

Every question shall be decided by a majority of votes of the members voting on that question, and in the event of an equality of votes at any meeting the chairman shall have a second or casting vote.

The proceedings of a joint committee shall not be invalidated by reason of there being any vacancy or vacancies in their body.

12. The said joint fishery committee shall proceed to appoint a board of conservators for such district, and shall determine the following matters:—

*Meeting of
joint fishery
committee.
S. F. Act,
1873, s. 9.
See pp. 37, 38.*

1. The number of conservators to be appointed as a board:
2. The number of members of the board to be appointed by each county in the district:
3. The names of the first members of the board, distinguishing those who are to be considered as appointed by each county:

4. The time and place at which the first meeting of the said board is to be held :

5. The county by the quarter sessions of which the accounts of the board are to be audited, hereinafter referred to as the audit county.

Any member of a joint committee may be appointed member of the board.

Dissolution
of a joint
fishery com-
mittee.
S. F. Act, 1865,
s. 28.

See p. 38.

Ex officio
members of
board.

Repealed,
S. F. Act,
1873, ss. 26,
65.

See p. 33.

13. When a joint committee have completed their dispositions for the formation of a board of conservators for a district, they shall give notice by post of such dispositions to the clerks of the peace of all the counties in such district, and when such notice has been given the joint committee shall be dissolved.

14. *All justices of the peace for any county, any part whereof is within the limits of any fishery district, being either owners or occupiers of any lands of the value of not less than one hundred pounds per annum abutting upon any salmon river within the same, and having a right of fishing in such river, and all persons paying under this act licences duty within that district to an amount of not less than fifty pounds per annum each, shall be ex officio members of the board of conservators for such district in addition to the appointed members of the said board.*

Tenure of
office by con-
servators.
S. F. Act, 1865,
s. 38.

See p. 40.

15. The members of a board of conservators shall hold office for one year, and be appointed annually at quarter sessions, and in the case of a board formed by a joint committee in the proportions fixed by that committee. Retiring members shall be eligible for re-appointment; and if at the time when any annual appointment ought to take place no such appointment is made the existing conservators shall remain in office until their successors are appointed.

See p. 51.

Any casual vacancy occurring by death, resignation or otherwise in the office of conservator may be filled up by the board, and the member chosen to fill such vacancy shall hold his office for such time only as the member vacating would have held the same if no vacancy had occurred.

Notice of ap-
pointment of
conservators.
S. F. Act, 1873,
s. 10.

See pp. 40, 41.

16. Notice of the first and of every subsequent appointment of a board of conservators, specifying the names and addresses of the persons appointed, shall, in the case of a board appointed by the justices of a single county, be advertised by the clerk of the peace of that county in some newspaper published or circulated in such county, and in the case of a board appointed by a joint committee be advertised by the clerk of the peace of every county in the district in some newspaper published or circulated in that county.

Cesser of
powers of ex-
isting conser-
vators.

See p. 32.

17. After the appointment of a board of conservators in pursuance of this act in any district the powers of all conservators or overseers for the preservation of salmon, appointed in pursuance of any other act of parliament, of charter or custom, and all powers of appointing the same, shall absolutely determine within the limits of the said district.

Rules as to
objections
and evidence.

18. No objection shall be made at any trial or in any legal proceeding to the validity of any orders or proceedings relating

to the appointment of a board of conservators in any district after the expiration of three calendar months from the date of the advertisement of such appointment in the newspaper, and a copy of the newspaper containing the advertisement of the appointment of a board of conservators shall be receivable in all courts of justice and in all legal proceedings as evidence of such appointment having been made. *See p. 41.*

19. Where more than one salmon river not included in the same fishery district flows into a common estuary the said secretary of state may define the limits of such estuary, including therein any portion of the adjoining sea or seacoast, and form it into a separate district, and place the whole of such district, either temporarily or permanently, within the jurisdiction of any one or more of the boards having jurisdiction over the salmon rivers flowing into the estuary, or place such district under the jurisdiction of a board composed of representatives from the other boards, and may require such board or boards to pay a certain proportion of the licence duties received by them to any other board or boards. *Provision as to common estuary. See p. 24.*

20. *A fishery district may from time to time be altered by including therein or excluding therefrom any salmon river or part of a salmon river. Any such alteration shall be made by a certificate of the said secretary of state upon the application of the board of conservators of the district, and after not less than six months' previous notice in writing has been given to any other board whose district is affected by such alteration. Where the effect of such alteration is to include in a district a portion of a county not hitherto included, the justices of that county in quarter sessions assembled shall add such number of members to the existing board of the district as the said secretary of state may determine, and where the effect of the alteration is to exclude altogether from the district any county, the members of the board appointed by such county shall cease to hold their offices at the board, and the members of the board appointed by the other counties in the district may respectively be increased in such manner as the said secretary thinks fit: provided, firstly, that no alteration of any district shall affect the powers of any existing board or boards until the new districts are fully constituted, and any change occasioned by such alteration in the constitution of any existing board or boards completely carried into effect; secondly, that notices of any alteration made in a district or in the constitution of a board of conservators in pursuance of this section shall be advertised in some newspaper or newspapers published or circulated in the district or districts affected by such alteration.* *Alterations of fishery district. Repealed, S. F. Act, 1873, ss. 5, 6, 7, 65. See p. 21.*

Board of Conservators, and their Officers.

21. A board of conservators shall be a body corporate, having perpetual succession and a common seal, with power to make contracts, and to sue and be sued in a common name. *Constitution of board of conservators. See p. 32.*

4. The time and place at which the first meeting of the said board is to be held :

5. The county by the quarter sessions of which the accounts of the board are to be audited, hereinafter referred to as the audit county.

Any member of a joint committee may be appointed member of the board.

Dissolution
of a joint
fishery com-
mittee.
S. F. Act, 1866,
s. 38.

See p. 38.

Ex officio
members of
board.

Repealed,
S. F. Act,
1873, ss. 36,
65.

See p. 33.

Tenure of
office by con-
servators.
S. F. Act, 1866,
s. 38.

See p. 40.

See p. 51.

Notice of ap-
pointment of
conservators.
S. F. Act, 1873,
s. 10.

See pp. 40, 41.

Cesser of
powers of ex-
isting conser-
vators.

See p. 32.

Rules as to
objections
and evidence.

13. When a joint committee have completed their dispositions for the formation of a board of conservators for a district, they shall give notice by post of such dispositions to the clerks of the peace of all the counties in such district, and when such notice has been given the joint committee shall be dissolved.

14. *All justices of the peace for any county, any part whereof is within the limits of any fishery district, being either owners or occupiers of any lands of the value of not less than one hundred pounds per annum abutting upon any salmon river within the same, and having a right of fishing in such river, and all persons paying under this act licences duty within that district to an amount of not less than fifty pounds per annum each, shall be ex officio members of the board of conservators for such district in addition to the appointed members of the said board.*

15. The members of a board of conservators shall hold office for one year, and be appointed annually at quarter sessions, and in the case of a board formed by a joint committee in the proportions fixed by that committee. Retiring members shall be eligible for re-appointment; and if at the time when any annual appointment ought to take place no such appointment is made the existing conservators shall remain in office until their successors are appointed.

Any casual vacancy occurring by death, resignation or otherwise in the office of conservator may be filled up by the board, and the member chosen to fill such vacancy shall hold his office for such time only as the member vacating would have held the same if no vacancy had occurred.

16. Notice of the first and of every subsequent appointment of a board of conservators, specifying the names and addresses of the persons appointed, shall, in the case of a board appointed by the justices of a single county, be advertised by the clerk of the peace of that county in some newspaper published or circulated in such county, and in the case of a board appointed by a joint committee be advertised by the clerk of the peace of every county in the district in some newspaper published or circulated in that county.

17. After the appointment of a board of conservators in pursuance of this act in any district the powers of all conservators or overseers for the preservation of salmon, appointed in pursuance of any other act of parliament, of charter or custom, and all powers of appointing the same, shall absolutely determine within the limits of the said district.

18. No objection shall be made at any trial or in any legal proceeding to the validity of any orders or proceedings relating

ing chairman for the time being of the board, to appoint a sufficient number of water bailiffs and other officers, to assign to them their salaries and duties, and to remove any water bailiff or officer so appointed: provided always, that nothing herein contained shall prevent the said board of conservators from obtaining the services of additional constables under the act third and fourth Victoria, chapter eighty-eight, section nineteen, for the purpose of carrying out the provisions of this act; such constables, when appointed, to have all the powers and privileges of water bailiffs, and to be paid for their services by the said board:

S. F. Act.
1873, s. 36.
See pp. 103—
112.

(2.) To issue such licences for fishing as are provided by this act: *See p. 116.*

(3.) To purchase by agreement, for the purpose only of removal, dams, fishing weirs, fishing mill-dams, or fixed engines they may deem it expedient to remove for the benefit of the fisheries in their district: *S. F. Act,*
1873, s. 49.
See p. 152.

(4.) To take legal proceedings against persons violating the provisions of the Salmon Fishery Acts, 1861, 1865, or either of them, or for removing such weirs or other fixed engines as they may be advised are illegal: *See pp. 334—*
400.

(5.) Generally to execute such works, do such acts, and incur such expenses as they may deem expedient to be executed, done or incurred for the protection and improvement of the salmon fisheries within their district, the increase of salmon, and the stocking of the waters in their district therewith, but so that it shall not be lawful for a board of conservators to pay to any member of the board any salary, fees or other remuneration, for his acting in any way as a member of or under the board: *S. F. Act,*
1873, s. 47.
See p. 59.

Provided that this section shall not authorize anything to be done which may injuriously affect any navigable river, canal, or inland navigation.

28. A board of conservators may, for the purpose of defraying any costs, charges and expenses incurred or to be incurred by them under the Salmon Fishery Acts, 1861, 1865, with the consent of one of her majesty's principal secretaries of state, borrow and take up, at interest, on the credit of the licence duties authorized to be imposed by them, or of any other property belonging to them, any sums of money necessary for defraying such costs, charges, and expenses; and for the purpose of securing the repayment of any sums of money so borrowed, together with such interest as aforesaid, the board of conservators may mortgage and assign over to the persons by or on behalf of whom such sums are advanced the said duties and property, or any part thereof; and the clauses of the Commissioners Clauses Act, 1847, with respect to mortgages to be created by the commissioners, shall form part of and be incorporated with this act, and any

Mortgage of
licence duties.
S. F. Act.
1873, s. 57.
See p. 134.

mortgagee or assignee may enforce payment of his principal and interest by appointment of a receiver.

Audit of accounts of board.

See p. 59.

29. An account of the receipts and disbursements of every board of conservators, in such form and with such particulars as may be required by the court of quarter sessions that appoints the board, or in the case of a joint board by the court of quarter sessions of the audit county, shall be laid annually before such courts of quarter sessions as aforesaid, and the justices assembled at such courts may disallow any item that they consider to be illegal.

Power of water bailiff for protection of fisheries.

Repealed,
S. F. Act,
1873, ss. 36,
65.

See p. 103.

30. Any conservator or water bailiff appointed under this act may examine any dam, fishing weir, fishing mill-dam, or fixed engine within the limits of his district, or any artificial watercourse connected with a salmon river in that district, and any owner or occupier of any such dam, weir, engine or artificial watercourse refusing to any conservator or water bailiff access to such dam, weir, engine, or watercourse, shall be liable to a penalty not exceeding five pounds for each offence.

A conservator or water bailiff may search all boats, nets, baskets, and other instruments used in fishing in salmon rivers; he may seize all illegal nets and other instruments of fishing, and all fish and other articles forfeited in pursuance of the Salmon Fishery Acts, 1861, 1865, and generally may act as a constable for the enforcement of the provisions of the said Salmon Fishery Acts, and when so acting shall be deemed to be a constable, and have all the same powers and privileges, and be subject to the same liabilities, as a constable duly appointed now has or is subject to within his constabrick by virtue of the common law of this realm, or of any statute.

The production with respect to a conservator, of a certificate of his being a conservator under the common seal of the board of which he is a member, and with respect to a water bailiff the production of the instrument of his appointment, executed in the manner directed by this act, shall be sufficient warrant for any conservator or water bailiff exercising the authorities given by this act.

Order for entry of water bailiff on land.

S. F. Act,
1878, s. 37.
See p. 107.

31. Where it appears to any justice of the peace, on the application of any conservator or water bailiff made on oath, that such conservator or bailiff has good reason to suspect that acts in contravention of the Salmon Fishery Acts, 1861 and 1865, are being or are likely to be done on any land situate on or near to a salmon river, the justice may, by order under his hand, authorize such conservator or bailiff, during a limited period to be specified in such order, not exceeding twenty-four hours, to enter upon and remain on such land during any hours of the day or night for the purpose of detecting the persons guilty of the aforesaid acts; and no conservator or water bailiff entering or remaining on any land in pursuance of such order shall be deemed to be a trespasser; but this section shall not affect any other powers of search conferred by the Salmon Fishery Acts, 1861 and 1865.

32. On application to the secretary of state by any board of conservators, setting forth that any fish pass or free gap within their district, under the provisions of the Salmon Fishery Act, 1861, is in their opinion capable of improvement, the said secretary of state may direct any alteration in the said fish pass or free gap, or may direct a new fish pass or free gap to be made in another site, and the board of conservators shall defray all costs, charges, and expenses attending the alteration or erection of any such fish pass or free gap, and for the purposes of this section, where a river is divided into separate branches, each branch shall be considered as a separate river: provided that no injury shall be done under the exercise of the powers given by this section to the supply of water to or of any navigable river, canal, or other inland navigation.

Alteration of fish pass or free gap.

S. F. Act, 1873, s. 50.

See p. 162.

Licences.

33. In any fishery district subject to the control of a board of conservators licences shall be granted at fixed prices to all persons using any rod and line for fishing for salmon, and in respect of all fishing weirs, fishing mill-dams, putts, putchers, nets, or other instruments or devices, except rods and lines, whereby salmon are caught; and the produce of such licences shall be applied in defraying the expenses of carrying into effect in such district the Salmon Fishery Acts, 1861 and 1865.

Issue of licences.

See p. 127.

34. The following rules shall be observed with respect to the licences granted in pursuance of this act; that is to say,

Rules as to licences.

(1.) *A licence for the use of a rod and line within a fishery district shall be granted to the person named therein on payment of the sum of one pound or such less sum as may be determined by the board of conservators of the district. A licence for the use of a rod and line shall not in any case be transferable:*

Repealed, S. F. Act, 1873, ss. 21, 65.

See p. 127.

(2.) *Licences for fishing weirs, fishing mill-dams, putts, putchers, nets, and other instruments and devices, except rods and lines for catching salmon, shall be granted on payment of such sums, not exceeding the sums specified in the first schedule hereto, as may from time to time be determined by the board of conservators of the district, with the approval of one of her majesty's principal secretaries of state; licences for fishing weirs, fishing mill-dams, putts, putchers, nets or other such instruments or devices as aforesaid, shall be available only for the use of the persons within the districts, and in respect of the instruments or devices to whom or for whose use within and in respect of which the same are respectively granted:*

Repealed, S. F. Act, 1873, ss. 21, 65.

See p. 129.

(3.) *The approval of the said secretary of state to a scale of licences for fishing weirs, fishing mill-dams, putts, putchers, nets and other instruments or devices as aforesaid shall not be given for any district unless one month's previous notice of the intention of the board to apply*

See p. 133.

for such approval has been given by advertisement, stating the scale of licence duties proposed by the conservators, in some one or more public newspaper or newspapers circulating in the district :

See p. 128.

- (4.) Any person for the time being entitled to an exclusive right of fishing for salmon in any river or part of a river may, upon application to the conservators of the district, obtain a general licence; and such general licence shall enable the licensee or any person authorized by him in writing under his hand, without any other licence, to fish for salmon in any legal manner in such river or part of a river, but it shall not be of any validity beyond the limits to which it refers: there shall be paid for such general licence such sum as the conservators may from time to time determine, with the sanction of the said secretary of state, having regard to the extent and productiveness of the fishery, and to the nature of the instruments or devices used for catching the fish :

See p. 132.

- (5.) All persons demanding to purchase licences, and tendering to any person appointed by the board to distribute the same the amount of licence duty to be paid under the provisions of this act, shall be entitled to receive the same without any question or objection whatsoever. But no licence shall confer any right to fish in any place or at any time in or at which the licensee is not otherwise entitled to fish; nor shall the grant of a licence be held to make any fishing weir, fishing mill-dam, putts, putchers, net or other instrument or device legal that would otherwise be illegal, or to imply any recognition of the legality of any such instrument :

See p. 128.

- (6.) All licences granted in pursuance of this act shall be available only during the fishing season of the year for which they are granted :

See p. 127.

- (7.) Licences granted in pursuance of this act shall be issued by the conservators of each district in such form as may be approved by the secretary of state, and be distributed in such manner as they may from time to time direct :

See p. 117.

- (8.) The conservators of a district shall, on their first appointment, give notice, by advertisement in one or more newspaper or newspapers published or circulating in their district, of a time, not being less than three months after such appointment, at the expiration of which it will be illegal to fish for salmon in that district without a licence, and shall state in the notice a place or places within their district where licences may be procured; and the production of a copy of a newspaper containing any such advertisement as aforesaid shall be conclusive evidence, as respects a fishery district, of due notice having been given of the time after which it

will be illegal in that district to fish for salmon without licences.

35. From and after a time to be appointed as aforesaid in a fishery district, any person fishing in that district with a rod and line for salmon without a proper licence shall be liable to a penalty of not less than double the amount to be paid for the requisite licence, and not exceeding five pounds.

36. From and after a time to be appointed as aforesaid in a fishery district, any person using within that district any fishing weir, fishing mill-dam, putt, putcher, net, or other instrument or device, not being a rod and line, for catching salmon, without having a proper licence for the same, shall be liable to a penalty of not less than double the amount to be paid for the requisite licence, and not exceeding twenty pounds.

37. Any licensee under this act on producing his licence, any conservator on producing a certificate of his being a conservator, or any water bailiff appointed in pursuance of this act on producing the instrument appointing him, or any constable, if authorized so to do by the justices in quarter sessions, may require any person found fishing with a rod and line, fishing weir or fishing mill-dam, net or other instrument, to produce his licence; and the person required to produce the same shall, if he do not produce the same, or make a reasonable excuse for the non-production thereof, be liable to a penalty not exceeding one pound.

38. A county of a city or county of a town shall for the purposes of this act be deemed to be a county; and any act hereby authorized to be done by or to the justices of a county in quarter sessions assembled shall, in the case of a county of a city or county of a town, be done by or to the council of such city or town assembled at any meeting of council; and any act to be done by or to the clerk of the peace may be done by or to the town clerk or other like officer; and notice of a meeting of the council given in the usual way shall be equivalent to the notice of quarter sessions required to be given in the case of the justices of a county.

Fixed Engines.

39. "Fixed engines" shall in this act and the Salmon Fishery Act, 1861, include any net or other implement for taking fish fixed to the soil, or made stationary in any other way, not being a fishing weir or fishing mill-dam: And whereas by the eleventh section of the Salmon Fishery Act, 1861, it is provided that the said section shall not affect any ancient right or mode of fishing as exercised at the time of the passing of the act by virtue of any grant or charter or immemorial usage: be it enacted, that the said provisions shall extend to exempt from the said eleventh section such fixed engines only as were in use for catching salmon during the open season of one thousand eight hundred and sixty-one, in pursuance of an ancient right or mode of fishing as lawfully exercised during such open season, by virtue of

Penalty on fishing with rod without licence.

S. F. Act, 1865, s. 57.

S. F. Act, 1873, s. 18, sub-s. 5.

S. F. Act, 1873, s. 22. See p. 117.

Penalty on fishing at weirs or with nets without licence.

S. F. Act, 1865, s. 57.

S. F. Act, 1873, s. 18, sub-s. 5.

S. F. Act, 1873, s. 22. See p. 117.

Production of licence.

See pp. 107, 137.

S. F. Act, 1865, s. 57.

S. F. Act, 1873, s. 18, sub-s. 5.

County of city or county of town included under the term county.

See pp. 17, 36.

Amendment of provisions relating to fixed engines.

S. F. Act, 1861, ss. 4, 11.

S. F. Act, 1873, s. 4.

See pp. 225—272.

any grant or charter or immemorial usage, which last-mentioned fixed engines are hereinafter referred to as privileged fixed engines. But inasmuch as in certain cases fixed engines in use during the four years previous to 1861, or one of such years, may, from temporary causes, have been out of use during the year 1861, and it is expedient to provide for such cases, it is hereby declared, that if it is proved to the satisfaction of the special commissioners appointed under this act that any fixed engine not in use during the open season of 1861 was in use during one of the said four years, proof of its user during one of such four years may be substituted for proof of its user during the open season of 1861; so, nevertheless, that no person shall by proving the use of different fixed engines during the said years be allowed to be entitled to a number of privileged engines exceeding the greatest number of such engines in use by him during some one of the years 1857, 1858, 1859, 1860, 1861.

Commissioners to inquire as to fixed engines.
36 Vict. c. 18.
See p. 363.

40. Subject to such appeal as is hereinafter mentioned, the special commissioners appointed under this act, hereinafter referred to as the commissioners, may inquire into the legality of all fixed engines erected or used for catching salmon within the limits of the Salmon Fishery Acts, 1861 and 1865, and abate and remove all such as are not proved to their satisfaction to be privileged.

Certificate as to privileged engines.
See p. 271.

41. Where a claim is made by any person on behalf of a fixed engine that it is privileged, the commissioners shall, on proof being given to their satisfaction that such engine is privileged, certify to that effect, stating in the certificate the situation, size and description of the engine. A certificate given in pursuance of this section shall be deemed to be an order of the commissioners, and to be subject to appeal as such. If unappealed from, or as confirmed or amended on appeal, such certificate shall be conclusive evidence that the engine is a privileged engine within the meaning of the Salmon Fishery Acts, 1861 and 1865, but the certificate shall not render any engine legal that would be otherwise illegal by reason of its being injurious to navigation.

Commissioners to inquire as to fishing weirs.
See pp. 272—315, 315—334.

42. Subject to such appeal as is hereinafter mentioned, the commissioners may inquire into the legality of all fishing weirs and fishing mill-dams throughout the limits of the Salmon Fishery Acts, 1861 and 1865, and shall remove such fishing weirs, and cause to be rendered incapable of catching fish such fishing mill-dams as are in contravention of the Salmon Fishery Act, 1861: provided that where a fishing weir is illegal only by reason of its not having a free gap as required by law, or a fishing mill-dam is illegal only by reason of its not having a fishing pass attached thereto as required by law, this section shall not empower the commissioners to remove such fishing weir if an undertaking be entered into, to the satisfaction of the commissioners, by the owner or other person interested in such weir, to make a legal free gap therein within a reasonable time to be prescribed by the commissioners, and a free gap is made accordingly, or to cause to be rendered incapable of catching fish such fishing mill-dam

if a like undertaking be entered into to attach a fish pass thereto, as required by law within a reasonable time to be prescribed by the commissioners, and such fish pass be attached accordingly.

43. The commissioners shall advertise in some daily morning London newspaper, and in some newspaper circulating in the district in which any salmon river or part of a river is situate, notice of the place where and time when they will be prepared to hold a court for determining the legality of all fishing weirs, fishing mill-dams and fixed engines on that river or part of a river.

Notices of
courts of
commis-
sioners.

The advertisement in the said newspapers shall be inserted at least twenty-eight days before the time at which any court mentioned therein is appointed to be held. The commissioners may alter any place or time mentioned in such advertisements, on giving notice of such alteration in such manner as the commissioners may think best calculated to insure to the parties interested knowledge of such alteration. The above-mentioned advertisement shall be in the form marked A. in the second schedule hereto, or as near thereto as circumstances admit. In addition to the foregoing advertisements, the commissioners, at least fourteen clear days before entering upon an inquiry as to the legality of any fishing weir, fishing mill-dam or fixed engine, shall serve a notice on the owner or one of the owners of such fishing weir, fishing mill-dam or fixed engine to appear before them at a place and time mentioned in such notice.

Service of a notice under this section may be made either by delivering the notice personally to such owner, or leaving it at or sending it by post in a registered letter to his last known place of abode, or, if the owner cannot be ascertained after due inquiry, by posting a copy of the notice on the fishing weir, fishing mill-dam or fixed engine that forms the subject of the inquiry.

The notice shall be in the form marked B. in the second schedule hereto, or as near thereto as circumstances admit, and may be addressed as appears in the said schedule, and need not contain the name of any person.

For the purposes of this section any person for the time being receiving the profits or a share of the profits of the salmon caught by such fishing weir, fishing mill-dam or fixed engine shall be deemed to be the owner, but in addition to any owner the commissioners shall hear any person appearing before them, whether legally interested or not in a fishing weir, fishing mill-dam or fixed engine.

Any person obstructing or refusing access to any officer of the commissioners who may be desirous of posting any notice in pursuance of this section on a fishing weir, fishing mill-dam or fixed engine shall be liable to a penalty not exceeding five pounds for each offence, and any person defacing, destroying or removing any such notice shall be liable to a penalty not exceeding forty shillings; and a notice shall be deemed to have been duly posted where the non-posting thereof has been occasioned by some per-

son obstructing or refusing access to the officer about to post the same.

The production of a copy of a newspaper containing any advertisement required by this act shall, for the purposes of this act, be evidence of such advertisement having been given at the time at which the newspaper bears date.

Hearing as to
legality of
fixed engines.

44. On the appearance of the owner or other persons for or against any fishing weir, fishing mill-dam or fixed engine, and after hearing what, if anything, is alleged by him or them, or on his or their behalf, or in the absence of any such persons, if they or any of them do not appear, and the commissioners are satisfied by evidence on oath that the notices required by the act have been given, the commissioners shall decide as to the legality or illegality of the fishing weir, fishing mill-dam or fixed engine, and in the event of their decision being in favour of its illegality they may, by warrant under their hands, order the owner to remove a fishing weir, or render incapable of catching fish a fishing mill-dam, where the law requires such fishing weir or fixed engine to be removed, or such fishing mill-dam to be rendered incapable of catching fish, to the satisfaction of the commissioners, within a reasonable time to be prescribed in the order, not being less than three months; and in case the owner fails to comply with the directions of the order, then the commissioners may, by warrant under their hands, authorize any constable or other person, at the expense of the owner, to carry their order into effect. The commissioners may sell any fixed engine, or any materials belonging to any fishing weir or fishing mill-dam, that are removed in pursuance of this act, and apply the proceeds of the sale in defraying any costs, charges and expenses incident to carrying their order into effect in reference to such fishing weir, fishing mill-dam or fixed engine, and shall render the surplus, if any, to the persons they may deem entitled thereto.

Provided, that if it is proved to the satisfaction of the commissioners that any posts or other materials belonging to an illegal fishing weir or fixed engine ordered to be removed may be capable of being used by any person as evidence of title to any foreshore or other land, the commissioners shall, instead of ordering the entire removal of such posts or materials, require the fishing weir or fixed engine to be destroyed so far only as they may in their discretion think necessary in order to prevent its being used for fishing purposes.

Appeal from
decision of
special com-
missioners.

45. If any person feels aggrieved with any decision of the commissioners the person aggrieved may appeal as follows; that is to say,

1. The appeal shall be to one of her Majesty's superior courts of law at Westminster.
2. The appeal shall be by special case stating the facts and the grounds for the decision.
3. The special case shall be settled by the commissioners upon the application of the appellant, to be made in writing

within fourteen days after the delivery of the decision, and not afterwards; and if the appellant be dissatisfied with the special case as settled by the commissioners, he may have the same settled by a judge of one of the said superior courts, on summons, at chambers.

4. Before the delivery of the case to the appellant he shall enter into a recognizance before the said commissioners or a justice of the peace, with or without sureties, and in such sum as the commissioners or the justice think fit, conditioned to prosecute without delay the appeal, and to submit to the judgment of the appellate court, and to pay such costs as may be awarded.
5. The special case shall be signed by the commissioners, and shall be delivered to the appellant by the commissioners.
6. On the receipt of the special case the appellant shall within fourteen days transmit by post or otherwise the original case to the proper officer of the appellate court.
7. When a party gives in good faith notice of an appeal under this section, but omits through mistake to do some act necessary to perfect the appeal, the appellate court may permit an amendment on such terms as it thinks just.
8. After the decision of the appellate court has been given on a case stated as aforesaid, the commissioners shall have the same powers to enforce that decision, when affirmed or amended, as they would have had to have enforced their original decision if it had not been appealed from.
9. Save as hereinbefore varied, the provisions of the Summary Jurisdiction Act of the twentieth and twenty-first years of her Majesty's reign, chapter forty-three, as to the powers of the superior court, as to directing a special case to be stated, as to the enforcing of recognizances, and as to all other matters, shall apply to an appeal under this section in the same manner as if the words "justice or justices" in the said Summary Jurisdiction Act included the special commissioners appointed under this act.
10. Any act required by this section to be done by the commissioners may be done by two of them, of whom the barrister hereinafter mentioned shall be one.

46. Her Majesty may, by warrant under the royal sign manual, appoint any number of persons not exceeding three, of whom one shall be a barrister of not less than seven years' standing at the bar, to be commissioners under this act during her Majesty's pleasure, and upon every vacancy in the office of any commissioner by death, resignation, or incapacity to act may appoint some other fit person to fill the vacancy: provided always, that in the case of a vacancy by the death, resignation, or incapacity of the commissioner required by this act to be a barrister, another barrister qualified as aforesaid be appointed in his place.

47. The commissioners appointed under this act shall be styled "the Special Commissioners for English Fisheries;" they shall cause to be made for their commission such seal or seals as they

Appointment of commissioners under sign manual.
36 Vict. c. 12.
See p. 373.

Commissioners to have a common seal.

Commissioners not to sit in parliament.

Acts of the commissioners.

The treasury to fix salaries, &c. and appoint additional officers.

Duration of office of commissioners.
86 Vict. c. 13.

Powers of commissioners.

Copies of orders of commissioners.

may require; and any summons, order, warrant, or other instrument or copy thereof, purporting to be sealed with the seal of the commissioners, and to be signed as hereinafter mentioned, shall be received in evidence without any further proof.

48. No commissioner shall during his continuance in office be capable of being elected or of sitting as a member of the house of commons.

49. All warrants for the removal of any fishing weir or fixed engine, or for the alteration of any fishing mill-dam, shall be signed by two at least of the commissioners, and all cases relating to the removal of such fishing weir or fixed engine, or alteration of any fishing mill-dam, shall be heard by all the commissioners, but the opinions of two of them, of whom the said barrister shall be one, shall, in case of difference, decide any question; any other acts, except as aforesaid, authorized to be done by the commissioners may be done by any one of them, and any notice or other instrument under the seal of the commissioners, and signed by any person delegated by them, shall be deemed to be sufficiently executed.

50. The commissioners of her Majesty's treasury may from time to time fix such salaries as they may think fit for the commissioners hereby appointed, and also appoint such additional officers, clerks and servants at such salaries as the said commissioners of the treasury may think proper and necessary, and from time to time dismiss such officers, clerks and servants, and appoint others in their place.

51. The offices of the said commissioners, and all powers, rights, and privileges pertaining thereto, shall continue in force for two years, and from thenceforth until the end of the next session of parliament.

52. The commissioners may examine any witnesses on oath, and with respect to enforcing the attendance of witnesses, and the production of deeds, books, papers, and documents, shall have the same powers as the judges of one of her Majesty's superior courts of Westminster have for such or the like purposes; moreover it shall be lawful for the commissioners to order any person to be removed from their court who may interrupt the business of the court, or refuse to obey their lawful orders in respect of the same; and it shall be the duty of the chief constable, commissioner, or chief officer of police of the county, city, borough, or place in which the court is held to take care that an officer of police do attend that court during its sitting for the purpose of keeping order therein, and to carry into effect any such order of the commissioners as aforesaid.

53. Copies of orders of the commissioners made in pursuance of this act, with the accompanying plans and maps, if any, shall be deposited with the clerk of the peace of the county where any engine or any subject matter to which such order relates is situate; and any copy of such order, plan, or map purporting to be stamped with the seal of the commissioners shall be admissible in evidence, and any copy of any certificate or order of the said

secretary of state in pursuance of the Salmon Fisheries Acts, 1861, 1865, or either of them, purporting to be stamped with the official stamp of the office of the said secretary, and to be signed by any person by order of the said secretary of state, shall also be admissible in evidence.

54. Every person who upon examination before the commissioners, or any one of them, wilfully gives false evidence, and every person who wilfully swears, affirms, or declares falsely in any affidavit relating to any matter within the cognizance of the commissioners, shall be liable to the pains and penalties of perjury.

Penalty for false swearing.

55. Proceedings before the commissioners shall not abate or be suspended by any death or transmission or change of interest; but in any such case of death or transmission or change of interest it shall be lawful for the commissioners, when they see fit, to require notices to be given to persons becoming interested, or to make any orders for continuing, suspending, or carrying on the proceedings, or otherwise in relation thereto, which to the commissioners appears just.

Proceedings not to abate by death, &c.

Miscellaneous.

56. Where any person has been convicted twice of an offence under any of the following sections of the Salmon Fishery Act, 1861, that is to say, sections eight, nine, fourteen, seventeen, and nineteen, he may, on being convicted a third time of an offence against any of the said sections, instead of being fined in a pecuniary penalty, be sentenced to imprisonment with or without hard labour for any period not exceeding six months, and, if a licensee, he shall on being convicted a second time of an offence against the Salmon Fishery Acts, 1861, 1865, forfeit his license.

Power in certain cases to award imprisonment with hard labour instead of penalty.

S. F. Act, 1873, s. 18, sub-s. 4.

See p. 376.

57. The penalty in respect of any offence under the Salmon Fishery Acts, 1861, 1865, shall on a conviction for a second offence be not less than one-half the greatest penalty capable of being imposed in respect of such offence; and on a conviction for a third or any subsequent offence the greatest amount of penalty mentioned in the said acts shall be imposed; but nothing herein contained shall affect the provisions of the Salmon Fishery Act, 1865, in respect of the discretion of imposing the punishment of hard labour as therein mentioned.

Minimum penalties.

S. F. Act, 1873, s. 19, sub-s. 5.

See p. 376.

58. Where any person has been convicted of an offence under section seventeen of the Salmon Fishery Act, 1861, he shall, in addition to the penalties thereby incurred, forfeit any net or moveable instrument used in committing such offence, and the convicting justices shall direct the same to be sold or destroyed, and the proceeds of such sale shall be paid to the conservators of the district.

Forfeiture of nets, &c.

S. F. Act, 1861, s. 17.

See p. 216.

59. Whereas by the twenty-third section of the Salmon Fishery Act, 1861, any person sustaining loss by reason of a person or body of persons affixing a fish pass to a dam, in pursuance of that section, may recover compensation for such injury in a summary manner from the person or body of persons by

Limit of time for compensation for fish pass.

S. F. Act, 1861, s. 23.

See p. 163.

Consent of conservators necessary for artificial propagation of salmon.

S. F. Act, 1861, ss. 8, 9, 14, 16.

S. F. Act, 1873, s. 18, sub-s. 6.

See pp. 214, 334.

As to disqualification of justices.

See p. 380.

Payment of penalties to conservators in certain cases.

S. F. Act, 1873, s. 62.

See p. 374.

River Esk within limits of act.

See pp. 2, 375.

Partial application of Salmon Acts to trout in salmon rivers.

S. F. Act, 1861, ss. 8, 9.

S. F. Act, 1873, s. 18, sub-s. 7, 8; s. 20.

See p. 334.

whom such fish pass has been affixed: be it enacted, that no such compensation shall be recovered unless proceedings for the recovery of the same are instituted within two years after the time at which the fish pass was first affixed to the dam.

60. Where any person, under the Salmon Fishery Act, 1861, is exempted from a penalty in respect of using or having in his possession salmon roe on the ground that he uses or has it in his possession for artificial propagation or other scientific purposes, or is upon the same ground exempt from a penalty in respect of taking or having in his possession unclean or unseasonable salmon, or catching or attempting to catch salmon when spawning or near their spawning beds, he shall not, if within a district where a board of conservators is established, be exempt in any of the above cases from such penalty unless the consent of the board has been given in writing to such use or possession of salmon roe, or to such taking possession of unclean or unseasonable salmon.

61. No justice of the peace shall be disqualified from hearing any case arising under the Salmon Fishery Acts, 1861, 1865, or either of them, by reason of his being a conservator or a member of a board of conservators, or a subscriber to any society for the protection of salmon or trout; provided that no justice shall be entitled to hear any case in respect of an offence committed on his own land.

62. Where any penalty is recovered on the complaint of a board of conservators or of any officer of or person authorized by a board of conservators, the court shall, unless for special reason they think it inexpedient so to do, direct the whole of the penalty and the proceeds of any forfeiture to be paid to the said board, to be applied by them for the purposes of the Salmon Fishery Acts, 1861, 1865.

63. The river Esk, together with its banks and tributary streams up to their source, shall be deemed to be within the limits of the Salmon Fishery Acts, 1861 and 1865: provided that all offences against the said acts committed within Scotch jurisdiction shall be prosecuted and punished in manner directed by the Salmon Fisheries (Scotland) Act, 1862.

64. The sections of the Salmon Fishery Act, 1861, that apply to fishing with lights, spears, and other prohibited instruments, and to using roe as a bait, and which are numbered respectively eight and nine, as amended by this act, shall apply to trout in a salmon river situate in a fishery district which is subject to a board of conservators appointed under this act; and in any such river no person shall fish for, catch or attempt to catch, or kill any trout between the second day of *November* and the first day of February following, both inclusive; and any person wilfully killing any trout in any such river as aforesaid during such interval as aforesaid shall forfeit any trout caught by him, and shall, in addition thereto, be liable to a penalty not exceeding two pounds for each offence: provided always, that nothing herein contained shall apply to any person having in his posses-

sion trout or trout roe for the purpose of artificial propagation or other purpose, if such person has the permission in writing of the board of the district in which the river runs from whence such trout or trout roe has been taken to catch such trout, and to have in his possession such trout or trout roe for the purposes aforesaid.

65. All salmon intended for exportation shall be entered for that purpose with the proper officer of customs, at the port or place of intended exportation, before shipment thereof; and any salmon shipped or exported or brought to any wharf, quay or other place for exportation, between the third day of September and the second day of February following, contrary to this section, shall be forfeited, and the person shipping or exporting, or bringing the same for exportation, shall be liable to a penalty not exceeding two pounds for every salmon so shipped or exported, or brought for exportation; and any officer of the customs may, between the third day of September and the *second day of February*, open any parcel entered or intended for exportation, or brought to any quay, wharf or other place for that purpose, and suspected by him to contain salmon, and may detain any salmon found in such parcel until proof is given, in manner provided by law, of the salmon being such as may be legally exported; and if the salmon, before such proof is given, become unfit for human food, the officer of customs may destroy the same.

Provisions as to exportation of salmon.
26 Vict. c. 10.
See p. 201.

66. If any person feels aggrieved by any determination or adjudication of the justices with respect to any penalty or forfeiture under the Salmon Fishery Acts, 1861, 1865, or either of the said acts, the person so aggrieved may appeal to the court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the justices from which the appeal is made; provided that the appellant shall, within three days after the cause of appeal has arisen, give notice in writing to the other party to the proceedings of his intention to appeal, and of the grounds thereof; and also provided that the appellant shall, within three days after the cause of appeal has arisen, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court: the court may adjourn the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the justices, with or without costs, to be paid by either party.

Appeal to quarter sessions in case of summary conviction.
See p. 377.

FIRST SCHEDULE.

*Repealed,
S. F. Act,
1875, s. 65,
third schedule.
See p. 140.*

LICENCE DUTIES.

				Maximum.		
				£	s.	d.
<i>Draft or hang nets</i>	..	..	each	5	0	0
<i>Coracle nets</i>	..	..	"	2	0	0
<i>Boz, crib or cruive</i>	..	..	"	10	0	0
<i>Putts</i>	..	..	"	0	2	6
<i>Putchers, under 50</i>	..	..	..	1	0	0
<i>For every additional 50 or part thereof</i>				1	0	0
<i>For outriggers or leaders to putts or putchers of 100 yards in length, or under..</i>				1	0	0
<i>For any outriggers or leaders of greater length</i>				..	5	0
<i>For V-weirs, or gog-heads or baulks</i>	each			10	0	0
<i>Otter lath or jack</i>	..	..	"	3	0	0
<i>Cross line</i>	..	..	"	2	0	0
<i>For any instrument not named in this schedule, and not being a rod and line, such sum as may be determined by the conservators with the approval of the secretary of state.</i>						

SECOND SCHEDULE.

FORM A.

ADVERTISEMENT.—SALMON FISHERY ACTS, 1861, 1865.

Notice is hereby given, that the special commissioners for English fisheries will hold a court

and at such court will proceed to inquire into the legality of all fishing weirs, fishing mill-dams and fixed engines situate on the

and all persons interested in such engines are required to attend at such court from day to day until discharged, in order that a decision may be made by the said commissioners with respect to the removal of such fishing weirs or fixed engines, or the alteration of such fishing mill-dams, or that such other order may be made by them in the premises as the facts of each case appear to warrant.

FORM B.

NOTICE.

To the owner of the

persons interested therein. , and all other

Take notice, you are required to appear before us, the special commissioners for English fisheries,

and thenceforward from day to day until discharged, in

order that there may be then and there an inquiry by us touching the legality of and that a decision may be made by us with respect to their removal, or that such other order may be made by us in the premises as the facts of the case may appear to us to warrant.

Given under our hands and under the common seal of the said commissioners this day of 186 .

33 & 34 VICT. c. 33.

An Act to amend the Acts relating to the Export of Unseasonable Salmon. [1st August, 1870.]

See p. 202.
28 Vict. c. 10.
S. F. Act.
1865, s. 64.

WHEREAS by the third section of the Salmon Acts Amendment Act, 1863, it is amongst other things provided that "the burden of proving that any salmon entered for exportation from any part of the united kingdom to parts beyond the seas between the third day of September and the second day of February following is not so entered in contravention of the said act shall lie on the person entering the same for exportation:"

And whereas it is expedient to make further provision for preventing the exportation of salmon that cannot legally be sold within the limits of the united kingdom:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

1. This act may be cited for all purposes as "The Salmon Acts Amendment Act, 1870." Short title.

2. This act shall not come into operation before the third day of September, one thousand eight hundred and seventy, which day is hereinafter referred to as "the commencement of this act." Commencement of act.

3. From and after the commencement of this act the said third section of the Salmon Acts Amendment Act, 1863, shall be read and construed as if the words "second day of February" were omitted therefrom and the words "thirtieth day of April" were inserted instead of the said omitted words. Amendment of sect. 3 of 26 Vict. c. 10. See p. 202.

4. The sixty-fifth section of the Salmon Fishery Act, 1865, shall be read and construed as if the words "second day of February" were omitted therefrom and the words "thirtieth day of April" were inserted instead of the said omitted words. Amendment of sect. 65 of 26 & 29 Vict. c. 121. See p. 208.

36 VICT. c. 13.

An Act to discontinue the Office of Special Commissioners of Salmon Fisheries in England. [24th April, 1873.]28 & 29 Vict.
c. 121.35 & 36 Vict.
c. 88.Discontinu-
ance of spe-
cial fishery
commis-
sioners.28 & 29 Vict.
c. 121, s. 46.

See p. 364.

WHEREAS under the Salmon Fishery Act, 1865, certain special commissioners were appointed, whose offices were to continue in force for two years, and from thenceforth until the end of the next session of parliament, and by various acts, and lastly by the Expiring Laws Continuance Act, 1872, the offices of the said commissioners were continued until the first day of October, one thousand eight hundred and seventy-three, and the end of the then next session of parliament:

And whereas it is expedient to discontinue the said commissioners as hereinafter mentioned:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

1. After the passing of this act, the offices of the special commissioners appointed under the Salmon Fishery Act, 1865, and all powers, rights and privileges pertaining thereto, shall determine, without prejudice nevertheless to anything done by the said commissioners before the said day, and no further appointment of such commissioners shall be made under the said act.

THE SALMON FISHERY ACT, 1873.

36 & 37 VICT. c. 71.

An Act to amend the Law relating to Salmon Fisheries in England and Wales.

WHEREAS it is expedient to amend the laws relating to salmon fisheries in England and Wales:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

PART I.—PRELIMINARY. DEFINITIONS.

1. This act may be cited for all purposes as "The Salmon Fishery Act, 1873," and this act and the Salmon Fishery Acts, 1861 and 1865, may be cited together as "The Salmon Fishery Acts, 1861 to 1873."

2. This act, so far as is consistent with the tenor thereof, shall be read as one with the Salmon Fishery Acts, 1861 and 1865.

Short title of
act.S. F. Act,
1861, s. 1.S. F. Act,
1865, s. 1.

See p. 6.

Construction
of act.S. F. Act,
1861, s. 2.S. F. Act,
1865, s. 2.

See p. 9.

3. This act shall not come into operation until the first day of September one thousand eight hundred and seventy-three, which date is hereinafter referred to as the commencement of this Act.

4. In the construction of this act and of the Salmon Fishery Acts, 1861 and 1865, unless there is something in the subject or context repugnant to such construction, the words and expressions hereinafter mentioned shall have respectively the meanings hereinafter assigned to them; (that is to say,)

"Annual close season" and "weekly close season" shall mean the annual close season and the weekly close season for all kinds of salmon fishing except by rod and line respectively applicable to and in force in the fishery district or place in which any offence charged shall be committed, and all penalties, forfeitures, proceedings, powers, and things described in the seventeenth, twentieth, twenty-first, and twenty-second sections of the Salmon Fishery Act, 1861, as applicable to the periods therein specified, or intended to be specified, as the annual and weekly close seasons, shall be deemed to apply to the annual or weekly close seasons, as these may have been or shall be lawfully varied from time to time in each fishery district respectively:

"Close season for rods" shall mean and include the annual season during which at any particular place it is or shall be unlawful at that place under the provisions of the Salmon Fishery Acts, 1861 to 1873, to fish for, kill, take, or destroy, or attempt to kill, take, or destroy, any salmon with a single rod and line:

The definition of the words "fishing weir," in the fourth section of the Salmon Fishery Act, 1861, is hereby repealed, and the words fishing weir shall mean any erection, structure, or obstruction fixed to the soil either temporarily or permanently across, or partly across, a river or branch of a river, and which is used for the exclusive purpose of catching or facilitating the catching of fish:

"Fixed engine" shall include, in addition to the nets, fixed implements, engines and devices respectively mentioned in the Salmon Fishery Acts, 1861 and 1865, any net placed or suspended in any inland or tidal waters unattended by the owner or any person duly authorized by the owner to use the same for catching salmon, and all engines, devices, machines, or contrivances, whether floating or otherwise, for placing or suspending such nets or maintaining them in working order or making them stationary:

"Grating" shall mean and include any device approved by the secretary of state for preventing the passage of fish through any channel:

"Inspectors" shall mean the inspectors of salmon fisheries appointed under the provisions of the thirty-first section of the Salmon Fishery Act, 1861:

Commencement of act.
S. F. Act,
1861, s. 3.
See p. 7.

Definition of terms.

S. F. Act,
1861, s. 4.
S. F. Act,
1865, s. 3.
See p. 11.

"Annual close season" and "weekly close season":
See p. 13.

"Close season for rods:"
See p. 13.

"Fishing weir:"
See pp. 272,
310.

"Fixed engine:"
See p. 226.

"Grating:"
See p. 173.

"Inspector:"
See p. 362.

"Occupier:" <i>See p. 12.</i>	"Occupier" shall include any person for the time being in actual possession of the fisheries and premises in respect of which that word is used, whether such person is owner or not;
"Otter lath or juck:" <i>See p. 212.</i>	"Otter lath or juck" shall mean and include any small boat or vessel, board, or stick, used for the purpose of running out baits, artificial or otherwise, across any portion of any lake or river, and whether used with a hand line or as auxiliary to a rod and line, or in any other way;
"Owner:" <i>See p. 12.</i>	"Owner" shall mean and include any person receiving the rents of the property in respect of which that word is used from the occupier, or who would receive the same if such property were let to a tenant;
"Returning officer:" <i>See p. 12.</i>	"Returning officer" shall mean the chairman of any board of conservators, or any person appointed by writing under his hand to conduct the elections of boards of conservators in the manner hereinafter prescribed;
"Rod and line:" <i>See p. 15.</i>	"Rod and line" shall mean single rod and line;
"Secretary of state:" <i>See p. 12.</i>	"Secretary of state" shall mean one of her Majesty's principal secretaries of state;
"Strokehall or snatch:" <i>See p. 213.</i>	"Strokehall or snatch" shall mean and include any instrument or device, whether used with a rod and line or otherwise, for the purpose of foul hooking any fish.

PART II.—FISHERY DISTRICTS.

Power of
secretary of
state to alter
districts.

*S. F. Act,
1865, s. 20.
See p. 21.*

5. A board of conservators of any fishery district may, after giving three calendar months' notice in writing to any other board or boards of conservators affected by such alteration, or in case there is no board, to the justices of the peace of any county in quarter sessions assembled, the whole or any part of which shall be affected by such alteration, apply to the secretary of state to enlarge, reduce or alter the limits of such district, or to combine two or more districts, or parts of districts; and, after such notice has been previously advertised for two successive weeks in one or more local newspapers, the secretary of state may thereupon by his certificate enlarge, reduce, or alter such district, either by uniting it with any other district or districts, or combining it with any other part or parts of a district or districts, or by severing any part from such district and forming it into a separate district, or uniting it with any other district, or by adding to such district, any place not yet included in any district; and the certificate of the secretary of state embodying all such alterations shall be granted in accordance with the provisions of the Salmon Fishery Act, 1865, and shall transfer and apportion any existing contracts, debts, mortgages, liabilities and assets among such altered boards. But no alteration of any district shall affect the power of any existing board or boards until the new districts are fully constituted.

Combined
districts.

6. When the effect of any such alteration is to include in a district either an additional portion of any county previously

included or a portion of a county not previously included, the justices of such county in quarter sessions assembled shall add such number of members to the existing board of the district as the secretary of state shall appoint; and where the effect of such alteration is to exclude altogether from the district any county, the whole of the members of the board appointed by such county shall cease to hold their offices at such board. When the effect of such alteration is to partially exclude from the district any county, the number of members representing that county shall be reduced to such number as the secretary of state shall appoint, and in case the effect of such alteration is to create the part severed from any district into a new district, or to unite the parts severed from different districts into a new district, then and in either of such cases the provisions of the Salmon Fishery Act, 1865, shall apply as if a new district had been created under the provisions of the fifth section of that act.

See p. 22.

7. A notice of any alteration made in any district or in the constitution of any board of conservators in pursuance of the provisions hereinbefore contained shall be advertised once in some daily morning London newspaper and at least once a week for four consecutive weeks in some newspaper or newspapers published or circulated within the district or districts affected by such alteration. The production of a copy of a newspaper containing any such advertisement shall be evidence of such advertisement having been given at the time such newspaper bears date.

Notices to be published.
See p. 26.

8. A copy of the certificate or certificates of the secretary of state deposited with the clerk of the peace of any county in relation to the formation, enlargement, combination, reduction, or alteration of a fishery district granted in pursuance of the fifth section of the Salmon Fishery Act, 1865, or of this act, certified or purporting to be certified as a true copy by the clerk of the peace of such county, shall be evidence that all the requisitions contained in the Salmon Fishery Act, 1865, or in this act, relating to the formation, enlargement, combination, reduction, or alteration of any fishery district have been complied with, and that such district has been duly formed, enlarged, combined, reduced, or altered with the limits and in the manner specified in such certificate or certificates.

Copy of certificate of formation of districts to be evidence.
See p. 383.

9. It shall be lawful for the secretary of state, on the application of the justices for any county comprised, or partly comprised in any fishery district, in quarter sessions assembled, one month's previous notice of such application having been given to the board of conservators affected by such alteration, to alter the number of conservators to be appointed at quarter sessions by the justices for all or any counties or county comprised, or partly comprised, in such district:

Power to secretary of state to alter the number of conservators appointed by quarter sessions.

Provided always, that no such alteration shall be made, unless one month's previous notice has been given of the intention of the secretary of state to make such alteration, in some newspaper or newspapers circulating within the district; and previous to the

S. F. Act, 1865, s. 12.
See p. 39.

expiration of such notice it shall be lawful for any person to represent to the secretary of state any objection which he may have to such alteration, and the secretary of state shall, after making such inquiry into such objection as he may think fit, either make such alteration, or not, as he may see fit, and shall cause his final determination to be published in the same newspaper or newspapers in which his intention to make such alteration was originally published.

Clerk of the peace to send notice of appointment.

See p. 40.

S. F. Act,
1865, s. 57.

S. F. Act,
1873, s. 18,
sub-s. 5.

Minute of conviction to be sent to board of conservators.

See p. 377.

S. F. Act,
1865, s. 37.

S. F. Act,
1873, s. 18,
sub-s. 5.

Appointment of conservators for river Esk.

S. F. Act,
1865, s. 63.
See p. 41.

Extension of the Malicious Injuries Act.

S. F. Act,
1861, s. 5.
24 & 25 Vict.
c. 97.
See p. 342.

No draft net to be shot within 100 yards of another until the latter is landed.
See p. 217.

10. In any fishery district, where any members of a board of conservators are appointed by the justices in quarter sessions of a single county, or of one or more counties, a notice of the appointment of the members of such board appointed by such county, or by each of such counties, with the name and address of each member, shall be sent to the clerk or other officer of the board of conservators by the clerk of the peace of such county, or of each of such counties, within fourteen days from the date of such appointment; and any clerk of the peace refusing or neglecting to send such notice shall for every such refusal or neglect be liable to a penalty of not exceeding two pounds.

11. Where any person is convicted of an offence under the Salmon Fishery Acts 1861 to 1873, or under any bye-law made in pursuance of this act, the clerk of the justices before whom such person is convicted shall forward a certificate of such conviction to the clerk of the board of conservators for the fishery district within which such conviction took place within one calendar month from the date of such conviction, and such certificate shall be receivable in evidence in all legal proceedings, and any clerk to any justices neglecting or refusing to forward such certificate to the clerk of the board of conservators, shall for every such refusal or neglect be liable to a penalty of not exceeding two pounds.

12. For the purposes of the Salmon Fishery Acts, 1861 to 1873, the commissioners of supply in Scotland shall have all the privileges and duties of the justices in quarter sessions in England for the election of boards of conservators for the river Esk.

PART III.—RESTRICTIONS AS TO CERTAIN MODES AND TIMES OF TAKING AND SELLING FISH.

13. The provisions of the thirty-second section of the Malicious Injuries to Property Act, so far as they relate to poisoning any water with intent to kill or destroy fish, shall be extended and apply to salmon rivers, as if the words "or in any salmon river" were inserted in the said section in lieu of the words "private rights of fishery" after the words "noxious material in any such pond or water."

14. Any person who shall shoot or work any seine or draft net for salmon in a river across the whole width or more than three-fourths of the width thereof, within one hundred yards from the nearest point in the line of shot of any other seine or draft net worked in like manner, and already shot or being worked in such

river before such last-mentioned net is fully drawn in and landed, shall for every such offence be liable to a penalty not exceeding five pounds.

15. No person, between the first day of January and the twenty-fourth day of June inclusive, shall hang, fix, or use in any salmon river any baskets, nets, traps, or devices for catching eels or the fry of eels, or place in any inland water any device whatsoever to catch or obstruct any fish descending the stream; or shall at any time place upon the apron of any weir any basket, trap, or device for taking fish, except wheels or leaps for taking lampreys between the first day of August and the first day of March; and any person acting in contravention of this section shall incur a penalty not exceeding two pounds for every day during which he suffers such engines to be fixed or used as aforesaid. But nothing herein contained shall extend to prohibit the use of eel baskets not exceeding in any part ten inches in diameter constructed so as to be fished with bait, and not used at any dam or weir.

16. No person shall, during the annual or weekly close season, in any year, place any obstruction, use any contrivance, or do any act, for the purpose of deterring salmon from passing up a river; and any person acting in contravention of this section shall be liable to a penalty of not exceeding five pounds: provided always, that nothing in this section shall apply to any kind of fishing for fish other than salmon legally practised in any river.

17. No person shall catch or kill, or attempt to catch or kill, except with rod and line, or scare or disturb, or attempt to scare or disturb, any salmon within fifty yards above or one hundred yards below any weir, dam, or artificial obstruction which hinders or retards the passage of salmon, or in any waters under or appurtenant to any mill, or in the head race or tail race of any mill, or in any waste race or pool communicating with such mill race, or in any artificial channel connected with such weir or obstruction; and no person shall fish with rod and line in such a manner, or such a place, near such weir or obstruction, as to wilfully scare or hinder salmon from passing through any fish pass, or over any part of such weir or obstruction usually available to salmon for the purposes of a passage. Any person acting in contravention of this section shall incur a penalty not exceeding five pounds for each offence, and a further penalty not exceeding one pound for every salmon so caught, and shall forfeit all boxes, baskets, nets, rods, implements, or devices used or placed for catching the same; provided that nothing in this section shall be deemed to apply to any legal fishing mill-dam not having a crib, box, or cruive, or to any fishing box, coop, apparatus, net, or mode of fishing in connexion with and forming part of such weir or obstruction for purposes of fishing: provided that where a fish pass approved by the home office, in pursuance of the twelfth section of the Salmon Fisheries Act, 1861, has been or shall be attached to such weir, dam, or artificial obstruction, this section shall not be enforced in respect of such weir or artificial obstruc-

S. F. Act.
1865, s. 57.
S. F. Act.
1873, s. 18,
sub-s. 5.

No eel baskets, &c. to be fixed between 1st January and 24th day of June.

See p. 224.

S. F. Act.
1865, s. 57.
S. F. Act.
1873, s. 18,
sub-s. 5.

Interference with salmon in close seasons.

See pp. 194, 199.

S. F. Act.
1865, s. 57.
S. F. Act.
1873, s. 18,
sub s. 5.

No fishing within fifty yards above or 100 yards below a weir or mill race except with rod and line.

S. F. Act.
1861, s. 12.
See p. 217.

S. F. Act.
1865, s. 57.
S. F. Act.
1873, s. 18,
sub s. 5.

tion until compensation has been made by the conservators of the district to the persons entitled to fish in such waters for such right of fishery, such compensation to be settled in case of dispute in manner in which disputed compensation as to lands is directed to be settled under the Lands Clauses Consolidation Acts.

18. The following sections of the Salmon Fishery Act, 1861, and the Salmon Fishery Act, 1865, shall be respectively amended in the following manner (that is to say):

Amendments
of Salmon
Fishery Acts,
1861 and
1865.

*S. F. Act,
1861, s. 8.
See p. 212.*

*S. F. Act,
1861, s. 11.
See p. 271.*

*S. F. Act,
1861, s. 14.
See p. 334.*

*S. F. Act,
1865, s. 56.
See p. 376.*

*S. F. Act,
1865, s. 57.
See p. 376.*

*S. F. Act,
1865, s. 60.
See p. 334.*

*S. F. Act,
1865, s. 64.
See p. 212.*

- (1.) The eighth section of the Salmon Fishery Act, 1861, shall be construed as if the words "otter lath, or jack, wire, or snare" were inserted after the word "any," and as if the words "or killing" were inserted after the word "catching" in the second sub-section, and as if the words "or kill" were inserted after the words "to catch" in the third sub-section:
- (2.) The eleventh section of the Salmon Fishery Act, 1861, shall be construed as if the words "or for the purpose of facilitating the catching of salmon, or detaining or obstructing the free passage of" were inserted after the words "used for catching:"
- (3.) The fourteenth section of the Salmon Fishery Act, 1861, shall be construed as if the words "kill or injure or attempt to take" were inserted after the words "wilfully take" in the first sub-section of the first part thereof, and the words "in respect of each fish taken, sold, or exposed for sale, or in his possession" in the second sub-section of the second part thereof were omitted and the words "for each such offence, and a further penalty of one pound in respect of each fish taken, sold, or exposed for sale, or in his possession" were inserted in lieu thereof:
- (4.) The fifty-sixth section of the Salmon Fishery Act, 1865, shall be construed as if the words "or less than one month" were inserted after the words "six months:"
- (5.) The fifty-seventh section of the Salmon Fishery Act, 1865, shall be read as if the words "1861 and 1865" were omitted, and the words "1861 to 1873, and under any bye-law made under the authority of this act" were inserted in lieu thereof; but it shall not be imperative on any justices under the provisions of such section to inflict a greater penalty than fifty shillings for a second offence, or than five pounds for a third offence under the Salmon Fishery Acts, 1861 to 1873:
- (6.) The sixtieth section of the Salmon Fishery Act, 1865, shall be construed as if the words "or young of salmon" were inserted throughout after the words "unclean or unseasonable salmon:"
- (7.) The sixty-fourth section of the Salmon Fishery Act, 1865, shall be read as if the word "October" were substituted for the word "November," and as if the word "trout" included the word "char:"

- (8.) The provisions of the fourteenth section of the Salmon Fishery Act, 1861, and the thirty-eighth section of this act shall be read as if the word "salmon" included the words "trout and char."

*S. F. Act,
1861. s. 14.
See p. 335.*

19. No person shall buy, sell, or expose for sale, or have in his possession for sale, any salmon or part of any salmon between the third day of September and the first day of February following, both inclusive. And any person acting in contravention of this section shall forfeit any salmon or part of any salmon so bought, sold, or exposed for sale, or in his possession for sale, and shall incur a penalty not exceeding two pounds for every such salmon or part of any salmon. But nothing herein contained shall apply to any person buying, selling, or exposing for sale or having in his possession for sale any salmon which has been cured, salted, pickled, or dried beyond the limits of the United Kingdom, or if within the limits of the United Kingdom between the first day of February and the third day of November in any year, or any clean fresh salmon caught within the limits of this act, provided its capture by any net, instrument, or device other than a rod and line, was lawful at the time and in the place where it was caught, or to any clean fresh salmon caught at any time beyond the limits of this act, provided its capture by any net, instrument, or device other than a rod and line, if within the United Kingdom, was lawful at the time and in the place where it was caught; but the burden of proving that any clean fresh salmon so bought, sold, exposed for sale, or in the possession of any person for sale was captured abroad or lawfully captured within the United Kingdom, shall lie on the person selling or exposing for sale, or having in his possession for sale any such salmon; and the burden of proving that any cured, salted, pickled, or dried salmon was cured, salted, pickled, or dried elsewhere than in the United Kingdom, or if within the United Kingdom, then between the first day of February and the third day of November in any year, shall lie upon the person in whose possession for sale such salmon is found.

*Penalties on
selling fish
during close
time.*

*S. F. Act,
1861. s. 19.
See p. 168.*

20. No person shall buy, sell, or expose for sale, or have in his possession for sale any trout or char between the second day of October and the first day of February following, both inclusive; and any person acting in contravention of this section shall forfeit any trout or char so bought, sold, or exposed for sale, or in his possession for sale, and shall incur a penalty not exceeding one pound for every such trout or char.

*Penalty on
selling trout
or char
during close
time.*

See p. 169.

PART IV.—LICENCES.

21. The following rules shall apply to the issuing of licences:

- (1.) Licences for fishing weirs, fishing mill-dams, putts, putchers, fixed nets, and other fixed instruments or devices, and for moveable nets and other moveable instruments or devices, and also for rods and lines for catching salmon within a fishery district, shall be granted on payment

*Provisions as
to licences.*

*S. F. Act,
1861. s. 34.
See p. 127.*

of such sums not exceeding the sums mentioned in the third schedule hereto as the board of conservators of the district, with the sanction of the secretary of state, may from time to time determine:

*S. F. Act,
1865, s. 34.
See p. 123.*

- (2.) Licences shall only be available within the fishery district for which they are granted. Licences granted for public or common fisheries shall be available only for such fisheries. Licences granted for private fisheries shall not be available in public or common fisheries, except licences for the use of a rod and line:

*S. F. Act,
1865, s. 34.
See p. 129.*

- (3.) Licences for fishing weirs, fishing mill-dams, putts, putchers, fixed nets, and other fixed instruments or devices for catching salmon, shall be available only for the use of the persons to whom they are granted, and for the employment of such instruments and devices as are named and described therein:

*S. F. Act,
1865, s. 34.
See p. 130.*

- (4.) Licences for moveable nets or other moveable instruments or devices for catching salmon shall be used only by the person to whom they are granted, or his agents or servants, and in respect of the instrument for which they are granted, and no person shall be deemed to be an agent or servant of a licensee for the purposes of this section unless his name is endorsed on the licence, either by the licensee or his authorized agent, or by the clerk or other persons authorized by the conservators, and the conservators shall make arrangements for facilitating the endorsement of the names of agents or servants of licensees by their clerk or other persons authorized as aforesaid. A fee of sixpence shall be payable to such clerk or other person authorized as aforesaid in respect of the endorsement of the name of any agent or servant on a licence, in pursuance of this section, by any person requiring the same, if made by the clerk or other person authorized by the conservators, or by the licensee in case of the endorsement being made by him or his authorized agent. A licensee shall not be entitled to have endorsed on his licence the names of agents or servants exceeding twice the number of persons required to work at one time the net, instrument, or device in respect of which the licence is granted. Any licensee may from time to time remove or cause to be removed the name of any agent or servant from his licence, and, if he so desire, may substitute or cause to be substituted the name of another agent or servant, on payment of a like fee for the name of each person so substituted; but no endorsement made by the licensee or his authorized agent shall be valid unless a copy thereof shall, within twenty-four hours from the date thereof, which date shall be inserted on the licence at the time of making such endorsement as aforesaid, be sent by post to such clerk or other person authorized as aforesaid, accom-

panied with such fee or fees as are payable under this section in respect of such endorsement, and no person shall be deemed to be an authorized agent of the licensee for the purposes of this sub-section unless his name and address and notice of his appointment as an authorized agent shall have been sent by post to the clerk or other person authorized by the conservators previously to any endorsement being made by such authorized agent: provided always, that if a licensee at any time during a fishing season, either works or assists in working a moveable net or other moveable instrument or device himself, the number of names which he shall be entitled to have endorsed on the licence for such moveable net or other moveable instrument or device shall be one less than twice the number of persons required at one time to work such moveable net, instrument, or device. Any licensee or authorized agent of a licensee who fraudulently endorses on the licence more names than he is entitled to have endorsed thereon, or who endorses thereon any date other than the actual date of the making of such endorsement, shall be liable on conviction thereof to a penalty not exceeding twenty pounds:

- (5.) A licence for the use of a rod and line shall be used only by a person to whom it is granted, and shall in no case be transferable.

22. In all fishery districts in which licences are payable under the provisions of the Salmon Fishery Act, 1865, or this act, any person fishing for, taking, killing, or attempting to take or kill, salmon by any means whatsoever other than a properly licensed fishing weir, fishing mill-dam, fixed engine, instrument, net, or device for catching or facilitating the catching of salmon, or assisting any such person in so doing, shall be liable to a penalty not exceeding five pounds, and a further penalty of not exceeding one pound in respect of each salmon so caught: provided that this section shall not prevent the use of a gaff or landing net as auxiliary to any holder of a rod licence angling with a rod and line, and that nothing herein contained shall affect the provisions of the thirty-fifth and thirty-sixth sections of the Salmon Fishery Act, 1865.

23. The conservators of a district may expend any moneys in their hands in any manner, not being illegal, they may think most conducive to the improvement of the salmon fisheries within their district.

24. In every fishery district the maximum duty payable in respect of any licence for the use of any rod and line, fishing weir, fishing mill-dam, putt, putcher, net, and other instrument or device for taking salmon shall not exceed the sums mentioned in the third schedule hereto.

25. The board of conservators may, with the consent and approval of the secretary of state, from time to time vary the licence

S. F. Act,
1865, s. 57.

S. F. Act,
1873, s. 18,
sub-s. 8.

S. F. Act,
1865, s. 34.

See p. 117.

Penalty on
taking
salmon with-
out a licence.

S. F. Act,
1865, ss. 35,
36.

See p. 117.

S. F. Act,
1865, s. 57.

S. F. Act,
1873, s. 18,
sub-s. 5.

Application
of funds in
the hands of
the conserva-
tors.

S. F. Act,
1865, s. 59.
See p. 59.

Scale of
licences.

S. F. Act,
1865, 1st
sched.

See p. 149.
Board may

vary licence duties with the approval of the secretary of state.
S. F. Act, 1878, s. 39, sub-s. 6.
See p. 129.

duties leviable within their district, and vary the licence duties leviable on similar instruments in different parts of the district, specifying in the licences the portions of the rivers in which the said licensed instruments may be used, so, however, that the licence duties so varied shall not exceed the sum mentioned in the third schedule hereto: provided, that in the event of any variation in the said scale of licence duties being agreed upon, the board shall cause notice thereof to be given by advertisement in one or more local newspapers not less than once in each week for four consecutive weeks before the commencement of the next fishing season; and if from any mistake or error or any other cause such variation shall not have been duly made and published, the scale of licences in force during the preceding year shall be deemed to be in force for all purposes whatsoever, and shall so continue until it shall be duly altered or varied under the provisions of this act.

PART V.—CONSTITUTION OF BOARDS OF CONSERVATORS.

(i.) *Ex-officio Members.*

Ex-officio members of board of conservators.
S. F. Act, 1865, s. 14.
See p. 33.

26. In addition to the elected members of any board of conservators for any fishery district, every person shall be an ex-officio member of such board who possesses either of the qualifications hereinafter mentioned; (that is to say),

- (1.) Is the owner or occupier of a fishery or fisheries in such fishery district, which is or are assessed to the rate for the relief of the poor on a gross estimated rental of thirty pounds a year; provided that in no case shall both the owner and occupier be entitled to act at the same time as ex-officio members in respect of the same fishery or fisheries; and if there be more than one such owner or occupier of the same fishery or fisheries, then any one of such owners or occupiers:
- (2.) Is the owner of lands in such fishery district of an annual value of not less than one hundred pounds, having a frontage of not less than one mile to any salmon river (in ascertaining such distance the frontage on both sides of the river to be counted), having the right to fish in the part of the river adjoining such frontage, and having paid licence duty for fishing for salmon within such district during the last preceding fishing season.

Provision for persons under disability.
See p. 33.

27. In all cases where the owner of any fisheries or lands possessing either of the aforesaid qualifications for ex-officio members of the said board of conservators shall be a minor, idiot, lunatic, feme covert, or under any legal disability, or shall be a corporation, company, or fishery association, one of the guardians or trustees of such minor, the committee of the estate of such idiot or lunatic, the husband of such feme covert, one of the members of such corporation, company, or fishery association, or the attorney or agent of such guardian, trustee, committee, husband, corporation, company, or fishery association (respectively)

shall be entitled to act as an ex-officio member of the board of conservators of the district within which such fisheries or lands are situate.

28. Any person claiming to be entitled to act as an ex-officio member of any board of conservators for any fishery district shall, previously to taking his seat at any such board, or taking any part in the proceedings thereof, or acting in any way as a member of such board, sign a declaration in such form as the board shall prescribe, setting forth the nature of the qualification in respect of which he claims to be entitled to act; and any person wilfully making any false declaration or acting before having made such declaration, having been required to do so, shall be liable to a penalty of not exceeding five pounds; and every ex-officio member having signed such declaration as aforesaid shall be entitled to act as a member of the board so long only as he continues to hold such qualification, and in case of any alteration being made in any fishery district, in pursuance of the provisions contained in Part II. of this act, he shall be entitled to act only in that district where his qualification exists.

Ex-officio members to sign a declaration.
See p. 35.

S. F. Act,
1865, s. 57.

S. F. Act,
1873, s. 18,
sub-s. 5.

(ii.) *Representative Members.*

29. In addition to the members of any board of conservators appointed under the provisions of the Salmon Fishery Act, 1865, in all fishery districts in any part of which there are any public or common rights of fishing, and where such rights are exercised by fishermen duly licensed to fish for salmon (otherwise than with rod and line), all persons who have taken out licences to fish in such public or common waters or both (other than licences for the use of a rod and line), during the last preceding fishing season, shall be entitled to elect such number of additional members to represent them at the board of conservators for such district as are hereinafter mentioned; (that is to say,)

Additional members of boards of conservators.
See p. 41.

If the aggregate amount of licence duty paid for fishing in public or common waters or both (other than licences for the use of a rod and line) does not exceed the sum of fifty pounds, one member:

And if the aggregate amount of licence duty exceed that sum, one additional member for every additional fifty pounds or part of fifty pounds.

30. The election of such additional members shall be held in accordance with the following provisions; (that is to say,)

Rules as to election of members.
See p. 45.

(1.) The board of conservators shall hold a meeting after the commencement of the annual close season in each year; at such meeting the clerk of the board shall produce a statement of the licence duty paid in the district during that year, and the board shall thereupon ascertain and declare the amount of licence duty paid in respect of licences for fishing otherwise than with rod and line in public or common waters or both, and the number of representative members for the ensuing year:

(2.) The first meeting of the new board of conservators shall

See pp. 43—
51.

be held annually upon such day after the day fixed for the election of such additional members in each year as the chairman of the board for the preceding year shall appoint:

- (3.) Within a reasonable time before the first meeting of any board of conservators in every year, the returning officer shall sign and publish a notice specifying the number of members to be elected and shall send a copy of such notice by post, with a nomination paper, in the form contained in the first schedule hereto, to each person qualified to vote under the last preceding section, and who shall be either resident within, or the owner of land within, or within ten miles of the boundary of the fishery district in respect of which such licence was issued:
- (4.) The notice shall specify the last day on which the nomination papers are to be sent to the returning officer:
- (5.) Any person entitled to vote may fill up such nomination paper with his own name, or with the name or names of any other person or persons (not exceeding the number of persons to be elected) and send such nomination paper by post to the returning officer on or before such specified day. If the number of persons nominated shall be the same or less than the number of persons to be elected, such persons shall be deemed to be duly elected for one year, or until the next annual election, and shall be certified as elected by the returning officer under his hand:
- (6.) If the number nominated exceed the number to be elected, the returning officer shall send by post a voting paper in the form contained in the second schedule hereto, containing in alphabetical order the names of all persons nominated, to each person entitled to vote, and shall specify a day, not less than five days or more than ten days from the date of sending such voting paper, upon which such voting paper is to be returned to him:
- (7.) Every voter shall, in the presence of a witness, write his initials or make his mark against the name or names of the person or persons (not exceeding the number to be elected) for whom he intends to vote, and shall insert the number of votes he intends to give to each person, and shall strike out the name or names of every other person or persons and sign the voting paper with his name and address. In case the voter cannot write, such witness shall attest and write his own initials against the name of every candidate for whom the voter intends to vote, and against the mark of such voter, and shall fill up the number of votes given to each candidate. In every case such witness shall subscribe his own name and address to such voting paper:

- (8.) Each voter shall be entitled to vote according to the following scale; (that is to say,) *See pp. 45—51.*
- If the licence duty paid by him shall exceed one pound and not exceed two pounds, one vote for each member to be elected:
- If the licence duty shall exceed two pounds but not exceed five pounds, two votes for every such member:
- If the licence duty shall exceed five pounds and not exceed ten pounds, three votes for every such member:
- If the licence duty shall exceed ten pounds and not exceed twenty pounds, four votes for every such member:
- If the licence duty shall exceed twenty pounds, five votes for every such member:
- (9.) A voter may give all such votes to any one of the persons nominated, or may distribute them amongst such of the persons nominated, not exceeding the number to be elected, as he shall think fit:
- (10.) The voter shall send the voting paper by post to the returning officer, duly filled up and attested as aforesaid, on or before the day mentioned therein:
- (11.) In case any person entitled to vote shall not have received a voting paper, he shall be entitled, on his personal application to the returning officer, before the day fixed for the return of the voting papers, to receive and fill in a voting paper in manner aforesaid:
- (12.) The returning officer, within four days after the day fixed for the return to him of the voting papers, shall inquire into the validity of the votes given, and cast up and ascertain the number of valid votes given to each person nominated, and the persons in accordance with the number to be elected who shall have obtained the greatest number of valid votes shall be deemed to be elected, and the returning officer shall certify them to be so under his hand:
- (13.) The returning officer shall make out a list containing the names of all persons nominated, together with the number of valid votes (in case of a contest) given to each person nominated, and shall sign and certify the same, and shall deliver such list, together with the nomination and voting papers, to the board of conservators at their next meeting; and such list shall be open to the inspection of all licence payers without fee or reward.
- (14.) The returning officer shall, immediately after ascertaining the persons elected, send by post to each person so elected a notice of his election, and shall publish the names of the persons so elected in such newspaper or

newspapers circulating within the district as the board shall direct:

See pp. 45—51.

(15.) If upon casting up the votes the returning officer shall find that an equal number of votes has been given for two or more persons, one or more of whom only is or are entitled to be elected, he shall, in the presence of two or more witnesses, determine by lot which of such persons is or are elected, and the person or persons so determined shall be deemed to be for all intents and purposes duly elected member or members of the board as if he or they had obtained a majority of the votes at such election:

*S. F. Act, 1865, s. 15.
See p. 51.*

(16.) Any casual vacancy occurring by death, resignation or otherwise, among such additional members of the board of conservators, may be filled up by the board; but the member chosen to fill such vacancy shall hold his office for such time only as the member vacating would have held the same if no vacancy had occurred.

Returning officer to recover expenses.
See p. 51.

31. The returning officer shall, at the first meeting of the board of conservators after any such election as aforesaid, lay before the board an account of the expenses incurred by him in conducting such election. And the board of conservators shall thereupon cause the same to be audited, and may disallow any item they consider to be excessive or illegal; and shall forthwith pay the amount found due to the returning officer, and in default of payment the returning officer shall be entitled to recover from the board of conservators in a summary manner whatever shall be found due to him after such accounts have been audited.

Penalty on returning officer for wilful neglect of provisions as to elections.
*See p. 50.
S. F. Act, 1865, s. 57.
S. F. Act, 1873, s. 18, sub-s. 5.*

32. At any such election, if the returning officer wilfully neglects or refuses to comply with any of the provisions of this act, he shall be liable for every such offence to a penalty not exceeding five pounds.

Penalty for personating voters, &c.
*See p. 48.
S. F. Act, 1865, s. 57.
S. F. Act, 1873, s. 18, sub-s. 5.*

33. At any such election, if any person or persons wilfully fabricate in whole or in part, or alter, deface, destroy, abstract or purloin any voting paper, or personate any person entitled to vote, or falsely assume to act in the name or on behalf of any person so entitled to vote or attest the execution of any voting paper, such person or persons shall be liable on conviction thereof to a penalty not exceeding twenty pounds or to be imprisoned for any time not exceeding three months, with or without hard labour.

Continuance of old boards, ratification of their proceedings.

34. Nothing in this act contained shall be held to invalidate anything done or suffered to be done before the passing thereof, by any board of conservators formed under the powers and authority of "The Salmon Fishery Act, 1865," and all the proceedings and acts of such boards shall be as valid and effectual as if this act had not been passed. And the proceedings of all boards of conservators after the passing of this act shall accordingly be subject and without prejudice to everything so done or

suffered to be done, and to all rights, liabilities, claims and demands, both present and future, which would if this act had not been passed be incident to and consequent on any or every thing so done or suffered to be done, and the proceedings, and all proceedings of boards of conservators under this act, shall be deemed a continuation of and form a part of the proceedings of boards of conservators constituted under "The Salmon Fishery Act, 1865." And the boards of conservators appointed under this act shall to all intents and purposes represent and be deemed a continuation of the boards of conservators appointed under the provisions of "The Salmon Fishery Act, 1865." And no act or proceeding of any board of conservators appointed under the provisions of "The Salmon Fishery Act, 1865," or of this act, shall be questioned on account of any vacancy or vacancies in their body, and no defect in the qualification or appointment of any person or persons acting as member or members of any board of conservators shall be deemed to vitiate or affect any proceedings of such board in which he or they may have taken part.

35. Any minute made of proceedings at a meeting of a board of conservators, signed by the chairman of such meeting, or by the chairman of the next meeting of the board, shall be receivable in evidence in all legal proceedings without further proof; and until the contrary is proved every meeting of the board in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified.

S. F. Act.
1865, s. 26.
See p. 52.

Evidence of
proceedings
at meetings.
S. F. Act.
1865, s. 26.
See p. 54.

PART VI.—POWERS OF WATER BAILIFFS.

36. Any water bailiff appointed under "The Salmon Fishery Act, 1861 to 1873," acting within the limits of his district, may do all or any of the following things; (that is to say,)

- (1.) Examine any weir, dam, fishing weir, fishing mill-dam, fixed engine or obstruction, or any artificial water-course connected with any salmon river; and any person refusing to any water bailiff access to any such weir, dam, fishing weir, fishing mill-dam, fixed engine, obstruction, or watercourse, shall be liable for every such offence to a penalty not exceeding five pounds:
- (2.) Stop and search on any salmon river any boat, barge, coracle, or other vessel used in fishing, or which there is reasonable cause to suspect contains any salmon, and seize any fish, instrument of fishing, or other articles forfeited in pursuance of "The Salmon Fishery Act, 1861 to 1873;" and any person refusing to allow any such boat, barge, coracle or other vessel to be stopped and searched, or resisting or obstructing any water bailiff in any such search, shall for every such offence be liable to a penalty not exceeding five pounds:

Powers of
water bailiff.
S. F. Act.
1865, s. 30.
See p. 108.

S. F. Act.
1865, s. 57.
S. F. Act.
1873, s. 18,
sub s. 5.

See pp. 104,
105.

S. F. Act,
1865, s. 57.

S. F. Act,
1873, s. 18,
sub-s. 5.

See p. 108.

See p. 109.

Water bailiff
may enter on
land.

S. F. Act,
1865, s. 31.

See p. 107.

Persons fish-
ing illegally
at night may
be appre-
hended.

S. F. Act,
1873, s. 18,
sub-s. 5.

See p. 109.

- (3.) Search and examine all nets, baskets, bags, or other instruments used in fishing or in carrying fish by persons whom there is reasonable cause to suspect of having possession of fish illegally caught; seize all fish and other articles forfeited in pursuance of "The Salmon Fishery Acts, 1861 to 1873;" and any person refusing to allow any nets, baskets, bags, or other instruments used in fishing or in carrying fish to be searched or examined, or resisting or obstructing any water bailiff in any such search or examination, shall for every such offence be liable to a penalty not exceeding five pounds:
- (4.) For the enforcement of the provisions of "The Salmon Fishery Acts, 1861 to 1873," every water bailiff shall be deemed to be a constable, and to have all the same powers and privileges, and be subject to the same liabilities as a constable duly appointed now has or is subject to in his constableness, by virtue of the common law of the realm or of any statute:
- (5.) The production by a water bailiff of the instrument of his appointment, executed in the manner prescribed in "The Salmon Fishery Act, 1865," shall be a sufficient warrant for any water bailiff exercising the authorities given to him under "The Salmon Fishery Acts, 1861 to 1873."

37. Any water bailiff may under a special order in writing from the board of conservators, signed by the chairman for the time being of such board, for this purpose at all reasonable times enter, remain upon, and traverse any lands, not being a dwelling-house or the curtilage thereof, adjoining or near to any salmon river within the fishery district of such board for the purpose of preventing any breach of the provisions of "The Salmon Fishery Acts, 1861 to 1873;" and no water bailiff entering, remaining upon, or traversing any land in pursuance of such order shall be deemed a trespasser. Provided always, that this clause shall not apply to decoys or lands used exclusively for the preservation of wild fowl, and that no such order shall remain in force for more than two months from the date thereof. But nothing herein contained shall affect any other powers of search conferred by "The Salmon Fishery Acts, 1861 to 1873."

38. If any person, between the expiration of the first hour after sunset on any day and the beginning of the last hour before sunrise of the following morning, illegally takes or kills salmon, or is found on or near any salmon river with intent illegally to take or kill salmon, or having in his possession for the capture of salmon any instrument prohibited by "The Salmon Fishery Acts, 1861 to 1873," it shall be lawful for any water bailiff, together with any assistants, to seize and apprehend any such offender without warrant, and to deliver him, as soon as may be, into the custody of a peace officer, in order to his being conveyed before two justices of the peace for the

purpose of being convicted in the penalty assigned for his offence.

PART VII.—BYE-LAWS.

39. Subject to the provisions hereinafter contained for the confirmation and publication of bye-laws, a board of conservators may make bye-laws for the better execution of "The Salmon Fishery Acts, 1861 to 1873," and for the better protection, preservation and improvement of the salmon fisheries within their district, and alter the same from time to time for all or any of the following purposes; (that is to say,)

Boards may make bye-laws for certain purposes.
See pp. 79—98.

- (1.) To alter the commencement and termination of the annual close season as to the whole or part of the district, so that such close season, when so altered, shall not be less than one hundred and fifty-four days, for all modes of salmon fishing, except with rod and line, and shall not commence later than the first of November in each year, and as regards fishing with rod and line, so that such close season shall not be less than ninety-two days, and shall not commence later than the first of December in each year: S. F. Act, 1861, s. 17.
See pp. 88, 186.
- (2.) To alter the commencement and termination of the weekly close season as to the whole or part of a district, so that such season shall not commence before six o'clock on Friday afternoon, and not terminate earlier than midnight on the Sunday following, nor continue later than twelve o'clock on the following Monday at noon, such weekly close time in no case to exceed forty-eight hours: S. F. Act, 1861, s. 21.
See pp. 89, 196.
- (3.) To determine the length, size, and description of nets, and the manner of using the same (not being fixed engines) for taking salmon: provided that no bye-law made under the authority of this section shall limit the length of a hang net, or limit the length of a draft net so as to be less than two hundred yards: See p. 90.
- (4.) To determine the minimum size of the mesh of nets for catching salmon that shall be lawfully used within the district, so that such mesh shall not be less than one and a half inch from knot to knot, and so that no person shall be compelled to use a mesh larger than two and a half inches, measured when wet: S. F. Act, 1861, s. 10.
See pp. 90, 215.
- (5.) To determine the form of licence and the manner in which licences shall be issued, provided that different forms be used for licences for fishing in public or common and in private fisheries: S. F. Act, 1865, s. 34.
See pp. 92, 127.
- (6.) To vary the rate of licence duty in different parts of the district, in respect of the length or size of the net used, so that such duty shall not exceed the sum mentioned in the third schedule hereto: S. F. Act, 1873, s. 25.
See pp. 92, 129.
- (7.) To determine what marks, labels, or numbers shall be

See p. 93.

See p. 93.

S. F. Act,

1861, s. 8.

See pp. 94,

213.

S. F. Act,

1861, s. 13.

S. F. Act,

1873, ss. 58—

61.

See pp. 94, 173

—180.

S. F. Act,

1873, s. 16.

See p. 95.

See pp. 96,

199.

See p. 98,

S. F. Act,

1865, s. 57.

S. F. Act,

1873, s. 18,

sub-s. 5.

See p. 84.

Bye-laws
may apply to
all or part
only of a
district.

See p. 96.

attached to licensed nets, or painted upon or affixed to boats, coracles, or other vessels used in fishing:

- (8.) To prohibit the use of nets within a certain distance of the mouth of any river, and of the point of confluence of rivers in any part of the district (not being a several fishery), and to erect and fix posts, buoys, and landmarks to indicate such distances respectively:
- (9.) To determine the time during which it shall be lawful to use a gaff in connexion with a rod and line:
- (10.) To determine when gratings shall be placed during certain times of the year across the head and tail race of mills and across any artificial channel, so, however, as not to diminish the supply of water to any mill, nor to interfere with the passage of vessels or otherwise injure any inland navigation or lock, but so that the provisions of the thirteenth section of "The Salmon Fishery Act, 1861," shall not be affected:
- (11.) To regulate during the annual and weekly close seasons the use within any river of nets for fish other than salmon, when such use at such times is prejudicial to the salmon fisheries: provided that nothing in this subsection contained shall authorize anything to be done which shall affect any part of any river in which part there is a several right of fishery, or any river or part of any river where the breadth at low water is greater than six miles:
- (12.) To prohibit the use in any inland water of any net, except a landing net or a net for taking eels, between the expiration of the first hour after sunset and the last hour before sunrise:

And the said board may, by any such bye-law, impose a penalty not exceeding the sum of five pounds for each offence against such bye-law; such penalties shall be recovered and applied in manner hereinafter provided: provided always, that such bye-law, having been reduced to writing and sealed with the common seal of the board, shall be confirmed and published in manner hereinafter provided, and shall be so framed as to allow the justices before whom any penalty imposed thereby shall be sought to be recovered to order the whole or part only of such penalty to be paid: provided also, that no bye-law shall be made unless notice of an intention to propose the same shall have been given in the notice convening the meeting of the conservators at which it is intended to propose such bye-law, which notice shall be issued one fortnight at least before the date of such meeting.

40. A board of conservators may make any bye-law to apply to the whole or to any part or parts of their district, and to the whole or any part or parts of the year, and may from time to time by any new bye-law revoke, vary, or alter either in whole or in part, or as to its application to the whole or to any part or parts of the district, any bye-law previously made, and may from time to time vary any bye-law made in respect of the

whole or any part or parts of the district, and may from time to time except or exclude from the operation of all or any of the bye-laws any part or parts of the district, or extend the operation of any bye-law made for any part or parts of the district to the whole or other parts of the district.

41. No bye-law made by such board of conservators shall come into operation until the same be confirmed by one of her Majesty's secretaries of state, who may direct an inquiry into the same at such time and place, and before such persons, and after giving such notices as he shall think fit; and with or without such inquiry he may allow or disallow the said bye-laws as he shall think fit: provided that if at any time before the confirmation of any bye-law for any purpose mentioned in subsections one, two, three, four, or eight of section thirty-nine, any owner or occupier of any fishery or any licensee who would be affected by such bye-law shall, by notice in writing to the secretary of state, object thereto, and shall give such security for the payment of any costs attending the inquiry and the notice hereinafter mentioned as the secretary of state may require, the secretary of state shall either disallow such bye-law or cause a public inquiry to be held in some convenient place by such person or persons as he may appoint, when all persons interested may have the opportunity of being heard; and after such inquiry the secretary of state shall either disallow such bye-law or give one month's notice of his intention to allow the same by advertisement in some newspaper or newspapers circulating in the district affected thereby.

42. For one month at least before any application for confirmation of any bye-laws, notice of the intention of the said board to apply for such confirmation shall be given once in each week by advertisement in one or more newspapers circulating in the district, and a copy of the proposed bye-laws shall be kept at the office of the board, or some place to be appointed by the chairman for that purpose, and all persons may at all reasonable times inspect such copy without fee or reward, and the said board shall furnish every person who shall apply for the same with a copy thereof, or of any part thereof, on payment of one penny.

43. The said bye-laws when confirmed shall be printed, and the secretary or clerk to the said board shall deliver a printed copy thereof to every person who shall pay licence duty without charge, and a copy thereof shall be placed and renewed from time to time, on boards, or put up in some conspicuous place or places within the district, and shall be open to inspection without fee or reward; and in case the said secretary or clerk shall wilfully refuse to deliver or to allow the same to be inspected as aforesaid, he shall for every such offence be liable to a penalty not exceeding five pounds.

44. Any bye-law made, confirmed and published according to the provisions of this act, shall be binding and be observed by

Bye-laws not to come into operation until confirmed by the secretary of state.

See p. 85.

Bye-laws to be open to inspection before application to confirm them.

See p. 85.

Bye-laws when confirmed to be printed and published.

See p. 87.

S. F. Act. 1866, s. 57.
S. F. Act. 1873, s. 18, sub-s. 5.

Bye-laws when confirmed and

published to be binding on all persons.
See p. 97.

Bye-laws proved by copy having seal of board and publication in newspapers.

See pp. 97, 384.

all parties, and shall be sufficient to justify all persons acting under the same.

45. The production of a written or printed copy of any bye-law purporting to have been confirmed, authenticated by the common seal of the board, shall be conclusive evidence of the existence and due making of such bye-law in all legal proceedings, and the production of a copy of any newspaper or newspapers containing the notice of the making of any such bye-law shall be taken and received in all legal proceedings as evidence that all things required by this act for the making and publication of the bye-law therein advertised have been duly done, performed and published.

PART VIII.—WEIRS AND FISH PASSES.

Penalty on all persons rebuilding weirs and making new weirs without fish passes, and raising or altering weirs so as to increase obstruction to passage of salmon.

*S. F. Act, 1861, s. 28.
See p. 149.*

S. F. Act, 1865, s. 57.

S. F. Act, 1873, s. 18, sub-s. 5.

46. Every person who in any salmon river, since the sixth day of August one thousand eight hundred and sixty-one, has created, caused, or increased, or who hereafter shall create, cause, or increase any obstruction to the passage of salmon, or who rebuilds or reinstates a weir or dam which from any cause shall have been destroyed or taken down to the extent of one-half of the length of such weir, dam, or obstruction, shall make a fish pass for salmon of such form and dimensions as the secretary of state shall approve, as part of the structure thereof, if none already exists, and every person who omits or fails to make such fish pass in such weir, or who newly builds a weir without providing such fish pass, or who raises or alters any existing weir in whole or part, so as to cause increased obstruction to the passage of salmon, or who makes or continues any obstruction whatsoever to the passage of salmon without lawful authority, shall incur a penalty of not exceeding twenty pounds for every such offence, and a further penalty of not exceeding two pounds for every day during which such offence is continued, commencing from the date of the first conviction; and it shall be lawful for the secretary of state to cause to be done any work by this section required to be done by such person, and to recover the expenses of doing the same in a summary manner from such person, or from the owner or occupier of such obstruction who shall neglect to do the same. But this section shall not authorize anything to be done that may injuriously affect any navigable river, canal, or inland navigation, public waterworks, dock or docks, the supply of water to which is obtained from any navigable river, canal, or inland navigation, under the provisions of any act of parliament, nor shall anything in this section, or in the twenty-fifth section of the Salmon Fishery Act, 1861, prevent any person from removing a fish pass for the purpose of repairing or altering such obstruction, so that within a reasonable time he restore such fish pass in as effectual a state as it was before he removed the same; and for the purpose of this section the owner or occupier of any such obstruction for the time being

shall be deemed to be the person who created or caused or increased such obstruction in manner aforesaid.

47. In case any member of the board of conservators of the district is the owner of any weir, dam, fishing mill-dam, or obstruction, nothing in the Salmon Fishery Acts, 1861 to 1873, shall prevent the board paying to such member any compensation in respect of the same, provided that such member does not vote in respect of the payment of any such compensation to himself.

Member of board may recover compensation.
S. F. Act, 1865, s. 27.
See p. 59.

48. Any person wilfully altering or injuring any fish pass, or doing any act whereby fish are obstructed or liable to be obstructed in using such fish pass, or whereby such fish pass is rendered less efficient, or altering the bed or banks of the river so as to render any fish pass less efficient, or using any contrivance or doing any act whereby fish are in anywise liable to be scared, hindered, or prevented from passing through such fish pass, shall for every such offence incur a penalty of not exceeding five pounds, and a further penalty of not exceeding one pound for every day during which any such alteration, obstruction, or contrivance is continued from the date of a second conviction for such offence, in addition to any expense which may be incurred in restoring such fish pass to its former state of efficiency.

Penalty on injuring and rendering fish pass inefficient.
S. F. Act, 1861, s. 23.
See p. 160.
S. F. Act, 1865, s. 57.
S. F. Act, 1873, s. 18, sub-s. 5.

49. Where any board of conservators shall be of opinion, having regard to the prejudicial effect upon the salmon fisheries of their district, caused by any weir, dam, fishing weir, fishing mill-dam, fixed engine, or artificial obstruction which hinders the passage of fish, that it would be beneficial to such fisheries if such weir, dam, fishing weir, fishing mill-dam, fixed engine, or artificial obstruction should be removed, in whole or in part, but the owner thereof shall be unwilling or unable to treat, or they cannot agree to the terms of purchase thereof, and such board shall be desirous of obtaining authority to acquire compulsorily the property of such weir, dam, fishing weir, fishing mill-dam, fixed engine, or artificial obstruction, and premises for the purposes of such removal; such board may, after giving one month's notice of their intention to the owner thereof, present a petition to the secretary of state praying that such board may, with reference to such weir, dam, fishing weir, fishing mill-dam, fixed engine, or artificial obstruction, and the premises used in connexion therewith, be allowed to put in force the powers of the Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the secretary of state may require.

Board, if desirous of acquiring compulsorily a weir or obstruction for the purposes of removal, may petition secretary of state.
See p. 182.

Upon the receipt of such petition, and upon due proof of notice being given to the owner and occupier of such weir, dam, fishing weir, fishing mill-dam, fixed engine, or artificial obstruction, the secretary of state, after satisfying himself that the board are provided with funds for the purchase of such weir, dam, fishing weir, fishing mill-dam, fixed engine, or artificial obstruction, and the premises connected therewith, shall take such petition into con-

sideration, and may either dismiss the same or direct an inquiry in the district in which such weir, dam, fishing weir, fishing mill-dam, or artificial obstruction is situated, or otherwise inquire into the propriety of assenting to the prayer of such petition.

After the completion of such inquiry, the secretary of state may, by provisional order, empower the said board to put in force with reference to the said weir, dam, fishing weir, fishing mill-dam, fixed engine, or artificial obstruction and premises referred to in such order, the powers of the Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, with such conditions and modifications as he may think fit, and the board shall serve a copy of any order so made upon the owner and occupier of the said weir, dam, fishing weir, fishing mill-dam, fixed engine, or artificial obstruction and premises. No provisional order so made shall be of any validity until the same has been confirmed by act of parliament, and the act confirming such order shall be deemed to be a public general act of parliament, and the said board shall be thereupon deemed and taken to be the promoters of an undertaking to remove the said weir, dam, fishing weir, fishing mill-dam, fixed engine, or artificial obstruction, in whole or part, so as to enable salmon to pass more freely, and the residue of the premises so purchased, when separated from such weir, dam, fishing weir, fishing mill-dam, fixed engine, or artificial obstruction, shall be deemed to be superfluous lands within the meaning of the said acts, and may be dealt with accordingly: provided that this section shall not extend to any weir constructed under any act of parliament for the purpose of improving the navigation of any river, or of supplying any town with water. For the purposes of this section the word "owner" shall mean any person or corporation who under the provisions of this clause and the Lands Clauses Consolidation Acts would be enabled to sell and convey any such weir, dam, fishing mill-dam, fixed engine, or artificial obstruction.

Provision as
to fish passes.

S. F. Act,
1861, *s.* 23.

S. F. Act,
1865, *s.* 32.

See pp. 152,
160.

50. When any proprietor of a fishery or board of conservators is or are, from the circumstances of the case, unable to attach a fish pass to any weir, dam, fishing mill-dam, or obstruction under the provisions of the twenty-third section of the Salmon Fishery Act, 1861, such proprietor or board of conservators may, after giving such notice as is prescribed in the last preceding section, present a petition to the secretary of state praying to be allowed to purchase so much of the bank adjoining the same as may be necessary for such fish pass, and the provisions contained in the last preceding section with reference to the proceedings upon a petition for the purchase of any weir or obstruction for the purpose of removal shall apply to a petition presented under the provisions of this section.

Provision as
to legal weirs
not now pro-
vided with
fish passes.

51. In any case where the special commissioners for English fisheries have decided that any fishing mill-dam, box, crib, or cruive is illegal only by reason of its not having a fish pass attached thereto as required by law, if the owner thereof enters

into an undertaking to erect and maintain at his own expense a fish pass in accordance with the provisions of the twelfth section of the Salmon Fishery Act, 1861, before the first day of January one thousand eight hundred and seventy-five, it shall be lawful for such person to use, from and after the erection of such fish pass, the said fishing mill-dam, box, crib, or cruive for taking salmon, any provision in the Salmon Fishery Act, 1865, to the contrary notwithstanding: provided nevertheless, that in the event of the owner of such fishing mill-dam, box, crib, or cruive not making such fish pass within the time above mentioned, his right of fishing or using such fishing mill-dam, box, crib, or cruive for the purpose of taking fish shall henceforth cease, and be for ever forfeited and lost, and the board of conservators for the district in which such fishing mill-dam, box, crib, or cruive is situated shall thereupon give notice to such owner to remove all or any cages, cribs, traps, boxes, cruives, or other contrivances for catching salmon within six calendar months after the service of such notice; and in the event of his non-compliance with such notice, the board aforesaid shall have power to remove the same and all other obstructions to the free passage of the fish.

52. In all cases where any fish pass has been already constructed in any weir, dam or fishing mill-dam, and has received the approval of the secretary of state, such fish pass shall be deemed to be a fish pass within the meaning of the Salmon Fishery Acts, 1861 to 1873, notwithstanding such fish pass was not constructed in the manner and by the parties specified in the Salmon Fishery Acts, 1861 to 1873. And it shall be lawful for the secretary of state to approve and certify any fish pass that now is or hereafter shall be constructed, if he is of opinion that such fish pass is efficient in all respects and for all purposes, as if the same had been constructed under the provisions of the Salmon Fishery Act, 1861, with the written consent and approbation of the secretary of state.

53. The following sections of the Salmon Fishery Act, 1861, shall be respectively amended in the following manner; (that is to say,)

The twenty-third and twenty-fourth sections thereof shall be read as if the words "or a board of conservators" were inserted after the words "proprietor of a fishery" or "proprietor" throughout such sections respectively:

The twenty-sixth section thereof shall be construed as if the words "where a fish pass is attached to any dam in pursuance of this act" were omitted, and the words "any dam" were substituted for the words "the dam," and the words "on Sundays and" were inserted after the words "kept shut," and the words "if any or over the dam" were inserted after the words "fish pass."

54. In all cases in which it is alleged that a board of conservators, in executing the powers and authorities of the Salmon Fishery Acts, 1861 to 1873, have caused any damage to or injuriously affected any land or other hereditaments by reason of

S. F. Act,
1865, s. 42.
See p. 333.

Secretary of
state may ap-
prove exist-
ing fish
passes.

S. F. Act,
1861, s. 23.

S. F. Act,
1865, s. 32.
See p. 161.

Amendment
of sections 23,
24 and 26 of
the Salmon
Fishery Act,
1861.

See p. 158.

See p. 163.

Compensa-
tion to be
paid on erect-
ing fish
passes or
gratings.

ascertained
by valuation
and paid into
the bank.

Where ven-
dor absolutely
entitled,
lands may be
sold on chief
rents.

Payment of
rents to be
charged on
tolls.

Power to
purchase
lands re-
quired for
additional
accommoda-
tion.

Authority to
sell and re-
purchase such
lands.

injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors if they agree, or if not then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase-money or compensation shall be deposited in the bank for the benefit of the parties interested, in manner hereinafter mentioned.

X. It shall be lawful for any person seised in fee of, or entitled to dispose of absolutely for his own benefit, any lands authorized to be purchased for the purposes of the special act to sell and convey such lands or any part thereof unto the promoters of the undertaking, in consideration of an annual rentcharge payable by the promoters of the undertaking, but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum.

XI. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.

XII. In case the promoters of the undertaking shall be empowered by the special act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions hereinbefore contained, would be enabled to sell and convey lands, to sell and convey the lands so authorized to be purchased for extraordinary purposes.

XIII. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons, as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of land to be held at any one time by the promoters of the undertaking, for the purposes aforesaid, shall not exceed the prescribed quantity.

plicable thereto, shall be valid: provided, that notice shall be given by the board, by advertisement in one or more local newspapers, one calendar month before the commencement of each fishing season, of the amount of such additional duty to be paid in addition to the ordinary licence duties in force in each district. And the estimate on which such additional duty is founded shall be kept by the clerk or other officer of the board, and be open to the inspection of all previous licence payers, riparian owners, and persons entitled to vote within the district, at reasonable times and places to be appointed by the board before the commencement of each fishing season.

PART IX.—GRATINGS TO PREVENT FISH ENTERING WATERCOURSES.

58. Any board of conservators after due notice to the owner or occupier of any mill or other premises, at the expense of such board during such period as may be prescribed in each year, may order to be placed in any watercourse, mill race, cut, leat, or other channel for conveying water for any purpose from any river frequented by salmon at or near the point of divergence from and return to such river, or either of them, or in any other suitable place, a grating of such form and dimensions as they shall determine: provided always, that nothing herein contained shall affect the liability of any person to place and maintain a grating or gratings across any artificial channel under the provisions of the thirteenth section of the Salmon Fishery Act, 1861, nor shall authorize any grating to be placed so as to obstruct any channel used for navigation or in any way to interfere with the effective working of any mill.

Gratings in watercourses.
S. F. Act, 1861, s. 12.
S. F. Act, 1878, s. 39, sub-a. 10.
See p. 174.

59. In all cases of construction of gratings under the powers of this act, the secretary of state may, in such cases as he shall deem expedient, cause any watercourse, mill race, cut, leat, or other channel to be widened at the expense of such board so far as necessary to compensate for the diminution of any flow of water caused by the erection of any grating, or shall take some other means to prevent the flow of water being prejudicially diminished or otherwise injured.

Power to widen channels.
See p. 175.

60. A board of conservators, with the consent of the secretary of state, may adopt such means as he shall approve for preventing the ingress of salmon into streams in which they or their spawning beds are, from the nature of the channel, liable to be destroyed, but so that no water rights used or enjoyed for the purposes of manufacture, or agricultural purposes or drainage or navigation, shall be prejudicially interfered with thereby.

Board may place gratings at mouths of streams.
See p. 176.

61. The owner or occupier of the lands adjoining any grating erected under the authority of this act, and the owner or occupier of the lands to which such watercourse, mill race, cut, leat, or other channel leads, shall take all reasonable means to preserve the said gratings from injury, and to prevent the same from being removed, and in case any owner, occupier, or other

Owner to preserve gratings.
See p. 178.

person shall injure such gratings, or remove any part of them, during the period prescribed for any such grating to be kept up by any bye-law made under the authority of this act, or open them improperly, or knowingly permit them to be injured or removed or improperly opened, he shall for every such injury, removal or improper opening, forfeit and pay any sum not exceeding five pounds.

S. F. Act.
1865, s. 57.
S. F. Act.
1873, s. 18,
sub-s. 5.

PART X.—LEGAL PROCEDURE.

Recovery of
penalties.
S. F. Act.
1861, s. 35.

See p. 373.

S. F. Act.
1865, s. 62.
See p. 374.

Returns.
See p. 363.

S. F. Act.
1865, s. 57.
S. F. Act.
1873, s. 18,
sub-s. 5.

Proof of
legality of
scale of
licences.
See p. 384.

Repeal of
acts.

62. All penalties imposed by the Salmon Fishery Acts, 1861 to 1873, or by any bye-law made in pursuance of this act, and all sums of money, costs and expenses by the said acts or either of them directed to be recovered in a summary manner, may be recovered within six months after the commission of the offence before two justices, in manner directed by an act passed in the eleventh and twelfth years of the reign of her present majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the performance of the duties of Justices of the Peace out of sessions within England and Wales, with respect to summary conviction and orders," or of any act amending the same. And all moneys received and penalties recovered under the said acts or any of them on the complaint of a board of conservators, or of any officer of or a person authorized by a board of conservators, shall be paid to the board of conservators for the district, to be applied by them for the purposes of the Salmon Fishery Acts, 1861 to 1873 (unless the court for some special reason otherwise order).

63. The clerk, secretary, or other officer where there is no clerk, of every board of conservators shall prepare and forward to the home office, before such date as the secretary of state shall from time to time appoint, an annual return in such form and made up to such date as the secretary of state shall from time to time appoint. Such return shall contain such information as the said secretary of state shall from time to time require; and any such person refusing or neglecting to make such return shall be liable to a penalty of not exceeding one pound for every such refusal or neglect.

64. The provisions of the Documentary Evidence Act, 1868, shall apply to a scale of licences approved by the secretary of state, in pursuance of the said Salmon Fishery Act, 1865, or this act, in the same manner as if such scale so approved as aforesaid were an order or regulation issued by such secretary of state, and the production of a copy of such scale of licences, purporting to be certified to be a correct copy of such scale, by any person empowered to certify the same in pursuance of the Documentary Evidence Act, shall be evidence that such scale has been approved of, and that all the steps required by the Salmon Fishery Act, 1865, or this act, relating to the formation and approval of such scale have been taken.

65. The eighteenth, nineteenth, and thirty-fifth sections of

the Salmon Fishery Act, 1861, and the fourteenth, twentieth, twenty-fourth, twenty-sixth, and thirtieth sections, the first and second sub-sections of the thirty-fourth section, and the first schedule of the Salmon Fishery Act, 1865, are hereby repealed, except so far as relates to anything done or in the course of being completed under the same respectively.

*S. F. Act,
1861, s. 39.
See p. 400.*

SCHEDULES.

FIRST SCHEDULE.

Form of Nomination Paper.

See p. 46.

—— Fishery District.

I the undersigned —— of —— do hereby nominate [*A. B.* of —— in the county of —— Esquire, *C. D.* of —— in the county of —— fisherman] for election as additional members of the board of conservators of the —— Fishery District under the provisions of the Salmon Fishery Act, 1873.

(Signed) ——

To ——

Returning officer for such election.

Dated this —— day of —— 187—.

SECOND SCHEDULE.

Form of Voting Paper.

See p. 47.

—— Fishery District.

Number of Voting Paper.	Name and Address of Voter.	Number of Votes.

Directions to the Voter.

The voter must write his initials against the name of every person for whom he votes, and insert the number of votes he intends to give to each candidate voted for, and must sign this paper in the presence of, and it must be attested by, a witness.

If the voter cannot write he must affix his mark, but such

mark must be attested by a witness, and such witness must write the initials of the voter against the name of every person for whom the voter intends to vote, and the number of votes given to each such person.

Initials of Witness.	Initials of the Voter against the Names of the Persons for whom he intends to vote.	Names of the Persons nominated.	Residence of the Persons nominated.	Quality or Calling of the Persons nominated.	Number of Votes given to each Candidate voted for.

I vote for the persons in the above list against whose name my initials are placed in the proportion above mentioned.

(Signed) ———

Mark of ———

Dated the ——— day of ——— 187—.

Name and address of witness,

See p. 129.

THIRD SCHEDULE.

Licence Duties.

For each and every—	£ s. d.
" Weir, hang, baulk, garth, goryd, box, crib, or cruiue	12 0 0
" Draft or hang net, not exceeding 200 yards in length measured along the head-rope when wet	5 0 0
" Ditto, exceeding 200 yards, for every additional 40 yards or part thereof	1 0 0
" Coracle net	2 5 0
" Putt	0 3 6
" Outtrigger or leader to putts and putchers, not exceeding 100 yards in length	2 0 0
" Ditto, exceeding 100 yards, for every additional 20 yards or part thereof	1 0 0
" Cross line	2 10 0
" Single rod and line	1 10 0
For putchers or butts, if not exceeding 50 in number	1 10 6
For every additional 50 or part thereof	1 10 6

For any instrument or device not named above, such sum as may be determined by the board of conservators, with the sanction of the secretary of state.

APPENDIX II.

STATUTES OR PARTS OF STATUTES INCORPORATED WITH THE SALMON FISHERY ACTS.

3 & 4 Vict. c. 88 ..	<i>An Act to amend the Act for the establishment of County and District Constables</i>	477
8 Vict. c. 18 ..	<i>Lands Clauses Consolidation Act</i>	478
10 Vict. c. 15 ..	<i>Gas Works Clauses Act, 1847 ..</i>	518
10 Vict. c. 16 ..	<i>Commissioners Clauses Act, 1847..</i>	522
11 & 12 Vict. c. 43	<i>An Act to facilitate the performance of the Duties of Justices of the Peace out of Sessions, within England and Wales, with respect to Summary Convictions and Orders</i>	528
17 & 18 Vict. c. 125	<i>Common Law Procedure Act, 1854</i>	545
24 & 25 Vict. c. 96	<i>Larceny Law Consolidation Act ..</i>	549
24 & 25 Vict. c. 97	<i>Malicious Injuries to Property Act</i>	554
24 & 25 Vict. c. 100	<i>An Act to consolidate the Law relating to Offences against the Person</i>	560
20 & 21 Vict. c. 43	<i>An Act to improve the administration of the Law so far as respects Summary Proceedings before Justices of the Peace.. ..</i>	562
31 & 32 Vict. c. 37	<i>The Documentary Evidence Act, 1868</i>	566
31 & 32 Vict. c. 45	<i>The Sea Fisheries Act, 1868 ..</i>	568

3 & 4 VICT. C. 88 (a).

An Act to amend the Act for the establishment of County and District Constables. [7th August, 1840.]

Sect. 19. It shall be lawful for the chief constable of any county, with the approval of the justices of the county in general or quarter session assembled (if he shall think fit), on the application of any Additional constables may be appointed.

(a) Referred to, *ante*, pp. 56, 111.

pointed at
the cost of
individuals.

Discontinu-
ance thereof.

cation of any person or persons showing the necessity thereof, to appoint and cause to be sworn in any additional number of constables, at any place within the limits of his authority, at the charge of the person or persons by whom the application shall be made, but subject to the orders of the chief constable, and for such time as he shall think fit; and every such constable shall have all the powers, privileges and duties of other county constables: provided always, that it shall be lawful for the person or persons on whose application such appointment shall have been made, upon giving one calendar month's notice in writing to the chief constable, to require that the constables so appointed shall be discontinued, and thereupon the chief constable shall discontinue such additional constables.

8 VICT. c. 18 (b).

An Act for consolidating in One Act certain Provisions usually inserted in Acts authorizing the taking of Lands for Undertakings of a public Nature. [8th May, 1845.]

Act to apply
to all under-
takings au-
thorized by
acts hereafter
to be passed.

WHEREAS it is expedient to comprise in one general act sundry provisions usually introduced into acts of parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: may it therefore please your majesty that it may be enacted; and be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that this act shall apply to every undertaking authorized by any act which shall hereafter be passed, and which shall authorize the purchase or taking of lands for such undertaking, and this act shall be incorporated with such act; and all the clauses and provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other act which shall be incorporated with such act, form part of such act, and be construed together therewith as forming one act.

Interpreta-
tions in this
act:
"Special
act:"

And with respect to the construction of this act and of acts to be incorporated therewith, be it enacted as follows:

II. The expression "the special act," used in this act, shall be construed to mean any act which shall be hereafter passed which shall authorize the taking of lands for the undertaking to which the same relates, and with which this act shall be so incorporated

(b) Referred to, *ante*, pp. 152, 154, 160.

as aforesaid; and the word "prescribed," used in this act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special act" had been used; and the expression "the works" or "the undertaking" shall mean the works or undertaking, of whatever nature, which shall by the special act be authorized to be executed; and the expression "the promoters of the undertaking" shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special act empowered to execute such works or undertaking.

III. The following words and expressions, both in this and the special act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say,)

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number: Number:

Words importing the masculine gender only shall include females: Gender:

The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure: "Lands:"

The word "lease" shall include an agreement for a lease: "Lease:"

The word "month" shall mean calendar month: "Month:"

The expression "superior courts" shall mean her majesty's superior courts of record at Westminster or Dublin, as the case may require: "Superior courts:"

The word "oath" shall include affirmation in the case of quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath: "Oath:"

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town: "County:"

The word "sheriff" shall include under sheriff, or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate: "the sheriff:"

The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the "the clerk of the peace:"

"Justices:"

Inquiry how
to be borne.

the jury shall be given for a greater sum than the sum previously offered by the promoters of the undertaking, all the costs of such inquiry shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one half of the costs of summoning, impannelling, and returning the jury, and of taking the inquiry and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry.

Particulars of
the costs.

LII. The costs of any such inquiry shall, in case of difference, be settled by one of the masters of the Court of Queen's Bench of England or Ireland, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impannelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attorneys, recording the verdict and judgment thereon, and otherwise incident to such inquiry.

Payment of
costs.

LIII. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands or of any interest therein, the same may be deducted and retained by the promoters of the undertaking, out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor under the provision hereinafter contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

Special jury
to be sum-
moned at the
request of
either party.

LIV. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff; and for that purpose the promoters of the undertaking shall by their warrant to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attorneys, at some convenient time and place appointed by him for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such

lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

VII. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed or entitled as aforesaid so to sell, convey or release; (that is to say,) all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life or for lives and years, or for years or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators and successors, but also for and on behalf of every person entitled in reversion, remainder or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics and idiots respectively could have exercised the same power under the authority of this or the special act if they had respectively been under no disability, and as to such trustees, executors and administrators, on behalf of their cestui que trusts, whether infants, issue unborn, lunatics, femmes covert or other persons, and that to the same extent as such cestui que trusts respectively could have exercised the same powers under the authority of this and the special act if they had respectively been under no disability.

Parties under disability enabled to sell and convey.

VIII. The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special act, or any act incorporated therewith, and the power to release lands from any rent, charge or incumbrance, and to agree for the apportionment of any such rent, charge or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

Parties under disability to exercise other powers.

IX. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special act, and the compensation to be paid for any permanent damage or

Amount of compensation in case of parties under disability to be

Declaration
to be made by
the surveyor.

inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands, nominate an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

LX. Before such surveyor shall enter upon the duty of making such valuation as aforesaid, he shall, in the presence of such justices, or one of them, make and subscribe the declaration following at the foot of such nomination; (that is to say,)

"I, A. B., do solemnly and sincerely declare, that I will faithfully, impartially and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

A. B.
"

"Made and subscribed in the presence of

And if any surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

Valuation,
&c. to be pro-
duced to the
owner of the
lands on de-
mand.

LXI. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

Expenses to
be borne by
promoters.

LXII. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Purchase-
money and
compensa-
tion, how to
be estimated.

LXIII. In estimating the purchase-money or compensation to be paid by the promoters of the undertaking in any of the cases aforesaid, regard shall be had by the justices, arbitrators or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special act, or any act incorporated therewith.

Where com-
pensation to
absent party
has been de-
termined by
a surveyor,
the party
may have the
same sub-
mitted to
arbitration.

LXIV. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the bank under the provisions herein contained, by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid could not be found or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or investment of the monies so deposited under the provisions herein contained by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as

XIV. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands except under the powers of this and the special act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them.

Restraint on purchase from incapacitated persons.

XV. Nothing in this or the special act contained shall enable any municipal corporation to sell for the purposes of the special act, without the approbation of the commissioners of her majesty's treasury of the united kingdom of Great Britain and Ireland, or any three of them, any lands which they could not have sold without such approbation before the passing of the special act, other than such lands as the company are by the powers of this or the special act empowered to purchase or take compulsorily.

Municipal corporations not to sell without the approbation of the treasury.

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows:

Purchase of Lands otherwise than by Agreement.

XVIII. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special act, or any act incorporated therewith, they are authorized to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

Notice of intention to take lands.

XIX. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, if any such can after diligent inquiry be found, and in case any such parties shall be absent from the united kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Service of notices on owners and occupiers of lands.

XX. If any such party be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or, if no such office can after diligent inquiry be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the

Service of notice on a corporation aggregate.

If parties fail to treat, or in case of dispute, question to be settled as after mentioned.

Disputes as to compensation where the amount claimed does not exceed £500. to be settled by two justices.

Compensation exceeding £500. to be settled by arbitration or jury, at the option of the party claiming compensation.

Method of proceeding for settling disputes as to compensation by justices.

occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

XXI. If for twenty-one days after the service of such notice, any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

XXII. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this act enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands, or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed fifty pounds, the same shall be settled by two justices.

XXIII. If the compensation claimed or offered in any such case shall exceed fifty pounds, and if the party claiming compensation desire to have the same settled by arbitration, and signify such desire by notice in writing to the promoters of the undertaking, before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for three months have failed to make their award, or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided.

XXIV. It shall be lawful for any justice, upon the application of either party with respect to any question of disputed compensation by this or the special act, or any act incorporated therewith, authorized to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons, and upon the appearance of such parties, or, in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, and the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

XXV. When any question of disputed compensation by this or the special act, or any act incorporated therewith, authorized or required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator, to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the promoters of the undertaking under the hands of the said promoters or any two of them, or of their secretary or clerk, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate under the common seal of such corporation; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

Appointment of arbitrator when questions are to be determined by arbitration.

XXVI. If, before the matters so referred shall be determined, any arbitrator appointed by either party die, or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

Vacancy of arbitrator to be supplied.

XXVII. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special act, and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final.

Appointment of umpire.

XXVIII. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either

Board of Trade empowered to

appoint an umpire on the subject of the arbitrators, in case of railway companies.

In case of death of single arbitrator the matter to be *quid de novo*.

If either arbitrator refuse to act the other to proceed *ex parte*.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

Power of arbitrators to call for books, &c.

Arbitrator or umpire to make a declaration.

Costs of arbitration how to be borne.

party to such arbitration, neglect to appoint an umpire, the board of trade, in any case in which a railway company shall be one party to the arbitration, and two justices in any other case, shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special act, shall be final.

XXIX. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration under the provisions of this or the special act in the same manner as if such arbitrator had not been appointed.

XXX. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

XXXI. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

XXXII. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

XXXIII. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall in the presence of a justice make and subscribe the following declaration; that is to say,

"I, A. B., do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the act [*naming the special act*]."

"Made and subscribed in the presence of

A. B.

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall willfully act contrary thereto he shall be guilty of a misdemeanor.

XXXIV. All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators, shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear

his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions.

XXXV. The arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

Award to be delivered to the promoters of the undertaking.

XXXVI. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

Submission may be made a rule of court.

XXXVII. No award made with respect to any question referred to arbitration under the provisions of this or the special act shall be set aside for irregularity or error in matter of form.

Award not void through error in form.

XXXVIII. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation they shall give not less than ten days' notice to the other party of their intention to cause such jury to be summoned, and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works.

Promoters of the undertaking to give notice before summoning a jury.

XXXIX. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury the promoters of the undertaking shall issue their warrant to the sheriff, requiring him to summon a jury for that purpose, and such warrant shall be under the common seal of the promoters of the undertaking if they be a corporation, or if they be not a corporation under the hands and seals of such promoters or any two of them; and if such sheriff be interested in the matter in dispute such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate, and if all the coroners of such county be so interested, such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living there, and who shall not be interested in the matter in dispute; and with respect to the persons last mentioned preference shall be given to one who shall have most recently served either of the said offices; and every ex-sheriff, coroner or ex-corporator shall have power, if he think fit, to appoint a deputy or assessor.

Warrant for summoning jury to be addressed to the sheriff.

XL. Throughout the enactments contained in this act relating to the reference to a jury, where the term "sheriff" is used, the provisions applicable thereto shall be held to apply to every coroner or other person lawfully acting in his place, and in every case in which any such warrant shall have been directed to any other person than the sheriff, such sheriff shall, immediately on receiving notice of the delivery of the warrant, deliver over, on application for that purpose, to the person to whom the same

Provisions applicable to sheriff to apply to coroner.

pointed at
the cost of
individuals.

Discontinu-
ance thereof.

cation of any person or persons showing the necessity thereof, to appoint and cause to be sworn in any additional number of constables, at any place within the limits of his authority, at the charge of the person or persons by whom the application shall be made, but subject to the orders of the chief constable, and for such time as he shall think fit; and every such constable shall have all the powers, privileges and duties of other county constables: provided always, that it shall be lawful for the person or persons on whose application such appointment shall have been made, upon giving one calendar month's notice in writing to the chief constable, to require that the constables so appointed shall be discontinued, and thereupon the chief constable shall discontinue such additional constables.

8 VICT. c. 18 (b).

An Act for consolidating in One Act certain Provisions usually inserted in Acts authorizing the taking of Lands for Undertakings of a public Nature. [8th May, 1845.]

Act to apply
to all under-
takings au-
thorized by
acts hereafter
to be passed.

Interpreta-
tions in this
act:
"Special
act:"

WHEREAS it is expedient to comprise in one general act sundry provisions usually introduced into acts of parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: may it therefore please your majesty that it may be enacted; and be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that this act shall apply to every undertaking authorized by any act which shall hereafter be passed, and which shall authorize the purchase or taking of lands for such undertaking, and this act shall be incorporated with such act; and all the clauses and provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other act which shall be incorporated with such act, form part of such act, and be construed together therewith as forming one act.

And with respect to the construction of this act and of acts to be incorporated therewith, be it enacted as follows:

II. The expression "the special act," used in this act, shall be construed to mean any act which shall be hereafter passed which shall authorize the taking of lands for the undertaking to which the same relates, and with which this act shall be so incorporated

(b) Referred to, *ante*, pp. 152, 154, 160.

as aforesaid; and the word "prescribed," used in this act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special act" had been used; and the expression "the works" or "the undertaking" shall mean the works or undertaking, of whatever nature, which shall by the special act be authorized to be executed; and the expression "the promoters of the undertaking" shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special act empowered to execute such works or undertaking.

III. The following words and expressions, both in this and the special act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say,)

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number: Number:

Words importing the masculine gender only shall include females: Gender:

The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure: "Lands:"

The word "lease" shall include an agreement for a lease: "Lease:"

The word "month" shall mean calendar month: "Month:"

The expression "superior courts" shall mean her majesty's superior courts of record at Westminster or Dublin, as the case may require: "Superior courts:"

The word "oath" shall include affirmation in the case of quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath: "Oath:"

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town: "County:"

The word "sheriff" shall include under sheriff, or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate: "the sheriff:"

The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the

"the clerk of the peace:"

"Justices:"

	<p>matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together:</p>
"Two justices:"	
"Owner:"	<p>Where under the provisions of this or the special act, or any act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorized or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special act, would be enabled to sell and convey lands to the promoters of the undertaking:</p>
"The bank."	<p>The expression "the bank" shall mean the Bank of England where the same shall relate to monies to be paid or deposited in respect of lands situate in England, and shall mean the Bank of Ireland where the same shall relate to monies to be paid or deposited in respect of lands situate in Ireland.</p>
Short title of the act.	<p>IV. And be it enacted, that in citing this act in other acts of parliament, and in legal instruments, it shall be sufficient to use the expression "The Lands Clauses Consolidation Act, 1845."</p>
Form in which portions of this act may be incorporated with other acts.	<p>V. And whereas it may be convenient in some cases to incorporate with acts of parliament hereafter to be passed some portion only of the provisions of this act: be it therefore enacted, that, for the purpose of making any such incorporation, it shall be sufficient in any such act to enact that the clauses of this act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this act in the words introductory to the enactment with respect to such matter) shall be incorporated with such act, and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such act, form part of such act, and such act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such act shall relate.</p>
Purchase of Lands by Agreement.	<p>And with respect to the purchase of lands by agreement, be it enacted as follows:</p>
Power to purchase lands by agreement.	<p>VI. Subject to the provisions of this and the special act it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special act authorized to be taken, and which shall be required for the purposes of such act, and with all parties having any estate or interest in such lands or by this or the special act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such</p>

lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

VII. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed or entitled as aforesaid so to sell, convey or release; (that is to say,) all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life or for lives and years, or for years or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators and successors, but also for and on behalf of every person entitled in reversion, remainder or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics and idiots respectively could have exercised the same power under the authority of this or the special act if they had respectively been under no disability, and as to such trustees, executors and administrators, on behalf of their cestui que trusts, whether infants, issue unborn, lunatics, femmes covert or other persons, and that to the same extent as such cestui que trusts respectively could have exercised the same powers under the authority of this and the special act if they had respectively been under no disability.

Parties under disability enabled to sell and convey.

VIII. The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special act, or any act incorporated therewith, and the power to release lands from any rent, charge or incumbrance, and to agree for the apportionment of any such rent, charge or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

Parties under disability to exercise other powers.

IX. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special act, and the compensation to be paid for any permanent damage or

Amount of compensation in case of parties under disability to be

B.

Y

See p. 163.

Provision as
to Severn
Navigation
weirs.

See p. 164.

Power to
enter and in-
spect weirs,
dams, &c.
S. F. Act,
1845, s. 34.
S. F. Act,
1873, s. 36.
See p. 58.
S. F. Act,
1865, s. 57.
S. F. Act,
1873, s. 18,
sub-s. 5.

Board may
levy addi-
tional duty
for perma-
nent im-
provements.
See p. 156.

the making or maintaining of any fish pass, grating or other work, if the compensation claimed in respect of such alleged damage shall not exceed the sum of fifty pounds, the same shall be settled by two justices of the peace, but if the compensation shall exceed the sum of fifty pounds the same shall be settled by arbitration in accordance with the provisions of the Common Law Procedure Act, 1854: provided always, that no compensation shall be recovered under this section unless proceedings for the recovery of the same are instituted within two years from the date of the erection of such fish pass, grating or other work.

55. Whereas it is expedient that the dams or weirs which have been constructed by the Severn Commissioners under the provisions of the Severn Navigation Acts, 1842 and 1853, should be placed under the same general law as is applicable to dams or weirs under the Salmon Fishery Acts, 1861 to 1873: be it therefore enacted, that sections one hundred and fifty-eight, one hundred and fifty-nine, and one hundred and sixty of the Severn Navigation Act, 1842, and so much of section three of the Severn Navigation Act, 1853, as extends their operation to the Tewkesbury Weir therein mentioned, be hereby repealed, and that each of the dams or weirs constructed by the Severn Commissioners under the provisions of the Severn Navigation Acts, 1842 and 1853, respectively, or either of them, shall be deemed a dam or weir within the meaning of the Salmon Fishery Acts, 1861 to 1873, and the provisions of the said acts shall apply thereto, and that every fish pass now existing in the said dams or weirs or either of them, or which may be constructed therein under the provisions of this act, shall be deemed a fish pass within the meaning of the Salmon Fishery Acts, 1861 to 1873, and shall be maintained in an efficient state by the said Severn Commissioners.

56. Any inspector, or any person or persons duly appointed in writing by a board of conservators, may at all times enter upon any lands to inspect any weir, dam, fishing weir, fishing mill-dam, fixed engine, obstruction, mill race or watercourse, and any person either refusing to admit or obstructing them or any of them in entering any such place or places shall for every such offence be liable to a penalty of not exceeding five pounds.

57. In addition to the licence duties authorized to be levied in a fishery district, the board of conservators may from time to time, with the sanction of the secretary of state, for the purpose of defraying the charges of any improvements made or about to be made for the purpose of facilitating the passage of salmon, levy additional licence duties throughout the district, not exceeding in any one year twenty-five per cent. of the sum paid by each person respectively, and the said additional duty shall be payable at the same time as and in addition to the ordinary licence duty, and shall for all the purposes of the Salmon Fishery Acts be deemed part of the ordinary licence duty, and no licence granted after the passing of this act without payment of such additional duty, if any, as well as the licence duty ap-

pliable thereto, shall be valid: provided, that notice shall be given by the board, by advertisement in one or more local newspapers, one calendar month before the commencement of each fishing season, of the amount of such additional duty to be paid in addition to the ordinary licence duties in force in each district. And the estimate on which such additional duty is founded shall be kept by the clerk or other officer of the board, and be open to the inspection of all previous licence payers, riparian owners, and persons entitled to vote within the district, at reasonable times and places to be appointed by the board before the commencement of each fishing season.

PART IX.—GRATINGS TO PREVENT FISH ENTERING WATERCOURSES.

58. Any board of conservators after due notice to the owner or occupier of any mill or other premises, at the expense of such board during such period as may be prescribed in each year, may order to be placed in any watercourse, mill race, cut, leat, or other channel for conveying water for any purpose from any river frequented by salmon at or near the point of divergence from and return to such river, or either of them, or in any other suitable place, a grating of such form and dimensions as they shall determine: provided always, that nothing herein contained shall affect the liability of any person to place and maintain a grating or gratings across any artificial channel under the provisions of the thirteenth section of the Salmon Fishery Act, 1861, nor shall authorize any grating to be placed so as to obstruct any channel used for navigation or in any way to interfere with the effective working of any mill.

59. In all cases of construction of gratings under the powers of this act, the secretary of state may, in such cases as he shall deem expedient, cause any watercourse, mill race, cut, leat, or other channel to be widened at the expense of such board so far as necessary to compensate for the diminution of any flow of water caused by the erection of any grating, or shall take some other means to prevent the flow of water being prejudicially diminished or otherwise injured.

60. A board of conservators, with the consent of the secretary of state, may adopt such means as he shall approve for preventing the ingress of salmon into streams in which they or their spawning beds are, from the nature of the channel, liable to be destroyed, but so that no water rights used or enjoyed for the purposes of manufacture, or agricultural purposes or drainage or navigation, shall be prejudicially interfered with thereby.

61. The owner or occupier of the lands adjoining any grating erected under the authority of this act, and the owner or occupier of the lands to which such watercourse, mill race, cut, leat, or other channel leads, shall take all reasonable means to preserve the said gratings from injury, and to prevent the same from being removed, and in case any owner, occupier, or other

Gratings in watercourses.

S. F. Act.
1861, s. 13.

S. F. Act.
1878, s. 39,
sub-s. 10.

See p. 174.

Power to widen channels.

See p. 175.

Board may place gratings at mouths of streams.

See p. 176.

Owner to preserve gratings.

See p. 178.

person shall injure such gratings, or remove any part of them, during the period prescribed for any such grating to be kept up by any bye-law made under the authority of this act, or open them improperly, or knowingly permit them to be injured or removed or improperly opened, he shall for every such injury, removal or improper opening, forfeit and pay any sum not exceeding five pounds.

S. F. Act.
1865, s. 57.
S. F. Act.
1873, s. 18,
sub-s. 5.

PART X.—LEGAL PROCEDURE.

Recovery of penalties.

S. F. Act.
1861, s. 35.

See p. 373.

S. F. Act.
1865, s. 62.
See p. 374.

Returns.
See p. 363.

S. F. Act.
1865, s. 57.
S. F. Act.
1873, s. 18,
sub-s. 5.

Proof of legality of scale of licences.
See p. 384.

Repeal of acts.

62. All penalties imposed by the Salmon Fishery Acts, 1861 to 1873, or by any bye-law made in pursuance of this act, and all sums of money, costs and expenses by the said acts or either of them directed to be recovered in a summary manner, may be recovered within six months after the commission of the offence before two justices, in manner directed by an act passed in the eleventh and twelfth years of the reign of her present majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the performance of the duties of Justices of the Peace out of sessions within England and Wales, with respect to summary conviction and orders," or of any act amending the same. And all moneys received and penalties recovered under the said acts or any of them on the complaint of a board of conservators, or of any officer of or a person authorized by a board of conservators, shall be paid to the board of conservators for the district, to be applied by them for the purposes of the Salmon Fishery Acts, 1861 to 1873 (unless the court for some special reason otherwise order).

63. The clerk, secretary, or other officer where there is no clerk, of every board of conservators shall prepare and forward to the home office, before such date as the secretary of state shall from time to time appoint, an annual return in such form and made up to such date as the secretary of state shall from time to time appoint. Such return shall contain such information as the said secretary of state shall from time to time require; and any such person refusing or neglecting to make such return shall be liable to a penalty of not exceeding one pound for every such refusal or neglect.

64. The provisions of the Documentary Evidence Act, 1868, shall apply to a scale of licences approved by the secretary of state, in pursuance of the said Salmon Fishery Act, 1865, or this act, in the same manner as if such scale so approved as aforesaid were an order or regulation issued by such secretary of state, and the production of a copy of such scale of licences, purporting to be certified to be a correct copy of such scale, by any person empowered to certify the same in pursuance of the Documentary Evidence Act, shall be evidence that such scale has been approved of, and that all the steps required by the Salmon Fishery Act, 1865, or this act, relating to the formation and approval of such scale have been taken.

65. The eighteenth, nineteenth, and thirty-fifth sections of

the Salmon Fishery Act, 1861, and the fourteenth, twentieth, twenty-fourth, twenty-sixth, and thirtieth sections, the first and second sub-sections of the thirty-fourth section, and the first schedule of the Salmon Fishery Act, 1865, are hereby repealed, except so far as relates to anything done or in the course of being completed under the same respectively. *S. P. Act, 1861, c. 39. See p. 400.*

SCHEDULES.

FIRST SCHEDULE.

Form of Nomination Paper.

See p. 46.

——— Fishery District.

I the undersigned ——— of ——— do hereby nominate [*A. B.* of ——— in the county of ——— Esquire, *C. D.* of ——— in the county of ——— fisherman] for election as additional members of the board of conservators of the ——— Fishery District under the provisions of the Salmon Fishery Act, 1878.

(Signed) ———

To ———

Returning officer for such election.

Dated this ——— day of ——— 187—.

SECOND SCHEDULE.

Form of Voting Paper.

See p. 47.

——— Fishery District.

Number of Voting Paper.	Name and Address of Voter.	Number of Votes.

Directions to the Voter.

The voter must write his initials against the name of every person for whom he votes, and insert the number of votes he intends to give to each candidate voted for, and must sign this paper in the presence of, and it must be attested by, a witness.

If the voter cannot write he must affix his mark, but such

such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

Court of
Chancery
may direct
application of
money in
respect of
leases or re-
versions as
they may
think just.

LXXXIV. Where any purchase-money or compensation paid into the bank under the provisions of this or the special act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Upon deposit
being made,
the owners of
the lands to
convey, or in
default the
lands to
vest in the
promoters of
the under-
taking upon a
deed poll
being exe-
cuted.

LXXXV. Upon deposit in the bank in manner hereinbefore provided of the purchase-money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special act or any act incorporated therewith, the owner of such lands, including in such term all parties by this act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase-money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled

to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

LXXVI. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase-money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, in the bank, in the name and with the privy of the accountant-general of the Court of Chancery in England or the Court of Exchequer in Ireland, to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them so far as the promoters of the undertaking can do), subject to the control and disposition of the said court.

LXXVII. Upon any such deposit of money as last aforesaid being made the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein: and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase-money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

LXXVIII. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery in England or the Court of Exchequer in Ireland, may, in a summary way, as to such court shall seem fit, order such money to be laid out or

Where parties refuse to convey, or do not show title, or cannot be found, the purchase-money to be deposited.

Upon deposit being made a receipt to be given, and the lands to vest upon a deed poll being executed.

Application of monies so deposited.

invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit.

Party in possession of the land desired the owner

LXXIX. If any question arise respecting the title to the lands in respect whereof such monies shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

Costs in cases of money deposited.

LXXX. In all cases of monies deposited in the bank under the provisions of this or the special act, or an act incorporated therewith, except where such monies shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say,) the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such monies in government or real securities, and of the reinvestment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested, and for the payment out of court of the principal of such monies, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: provided always, that the costs of one application only for reinvestment in land shall be allowed, unless it shall appear to the Court of Chancery in England or the Court of Exchequer in Ireland that it is for the benefit of the parties interested in the said monies that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

And with respect to the conveyances of lands, be it enacted as follows:

Conveyances.

LXXXI. Conveyances of lands to be purchased under the provisions of this or the special act, or any act incorporated therewith, may be according to the forms in the schedules (A.) and (B.) respectively to this act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules or as near thereto as the circumstances of the case will admit shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration, or by construction of law, on the estate of interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

Form of conveyances.

LXXXII. The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction and verification of such title.

Costs of conveyances.

LXXXIII. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery or by a master in Chancery in Ireland, upon an order of the same court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation.

Taxation of costs of conveyances.

Inquiry how
to be borne.

the jury shall be given for a greater sum than the sum previously offered by the promoters of the undertaking, all the costs of such inquiry shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one half of the costs of summoning, impannelling, and returning the jury, and of taking the inquiry and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry.

Particulars of
the costs.

LII. The costs of any such inquiry shall, in case of difference, be settled by one of the masters of the Court of Queen's Bench of England or Ireland, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impannelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attorneys, recording the verdict and judgment thereon, and otherwise incident to such inquiry.

Payment of
costs.

LIII. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands or of any interest therein, the same may be deducted and retained by the promoters of the undertaking, out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor under the provision hereinafter contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

Special jury
to be sum-
moned at the
request of
either party.

LIV. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff; and for that purpose the promoters of the undertaking shall by their warrant to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attorneys, at some convenient time and place appointed by him for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such

summons); and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the superior courts, and the sheriff shall appoint a day, not later than the eighth day after striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days' notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the superior courts.

LV. The special jury on such inquiry shall consist of twelve of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen, who shall not have been previously struck off the aforesaid list, and who may then be attending the court, or can speedily be procured, so as to complete such jury, all parties having their lawful challenges against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury, and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable, as hereinbefore provided in the case of a trial by common jury.

Deficiency of special jurymen.

LVI. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

Other inquiries before same special jury by consent.

LVII. No jurymen shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year.

Jurymen not to attend more than once a year.

LVIII. The purchase-money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot, after diligent inquiry, be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands shall be such as shall be determined by the valuation of such able practical surveyor as two justices shall nominate for that purpose as hereinafter mentioned.

Compensation to absent parties to be determined by a surveyor appointed by two justices.

LIX. Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such

Two justices to nominate a surveyor.

Declaration
to be made by
the surveyor.

inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands, nominate an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

LX. Before such surveyor shall enter upon the duty of making such valuation as aforesaid, he shall, in the presence of such justices, or one of them, make and subscribe the declaration following at the foot of such nomination; (that is to say,)

"I, A. B., do solemnly and sincerely declare, that I will faithfully, impartially and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

A. B.

"Made and subscribed in the presence of

."

And if any surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

Valuation,
&c. to be pro-
duced to the
owner of the
lands on de-
mand.

LXI. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

Expenses to
be borne by
promoters.

LXII. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Purchase-
money and compen-
sation, how to
be estimated.

LXIII. In estimating the purchase-money or compensation to be paid by the promoters of the undertaking in any of the cases aforesaid, regard shall be had by the justices, arbitrators or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special act, or any act incorporated therewith.

Where com-
pensation to
absent party
has been de-
termined by
a surveyor,
the party
may have the
same sub-
mitted to
arbitration.

LXIV. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the bank under the provisions herein contained, by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid could not be found or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or investment of the monies so deposited under the provisions herein contained by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as

in other cases of disputed compensation, hereinbefore authorized or required to be submitted to arbitration.

LXV. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

Question to be submitted to the arbitrators.

LXVI. If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or in default thereof the same may be enforced by attachment, or recovered with costs by action or suit in any of the superior courts.

If further sum awarded, promoters to pay or deposit same within 14 days.

LXVII. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators, but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

Costs of the arbitration.

LXVIII. If any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special act, or any act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of fifty pounds, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided; or if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compen-

To be settled by arbitration or jury, at the option of the party claiming compensation.

manor to enfranchise on payment of compensation.

agreed upon or determined, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, the lord of the manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common soccage; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common soccage.

Apportionment of copyhold rents.

XCVIII. If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices; and the enfranchisement of any copyhold or customary lands taken by virtue of this or the special act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents; and with reference to any such apportioned rents, the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

Common Lands.

Compensation for common lands, where held of a manor, &c., how to be paid.

And with respect to any such lands, being common or waste lands, be it enacted as follows:

XCIX. The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled, other than his right in the soil of such lands, shall be determined and paid and applied in manner hereinafter provided with respect to common lands, the right in the soil of which shall belong to the commoners; and upon payment or deposit in the bank of the compensation so determined, all such commonable and other rights shall cease and be extinguished.

C. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking, in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance; and in default of such conveyance, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon the lands, in respect whereof such last-mentioned compensation shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided.

Lord of the manor, &c. to convey to the promoters of the undertaking on receiving compensation for his interest.

CI. The compensation to be paid with respect to any such lands, being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands, the right in the soil whereof shall not belong to the commoners, other than the compensation to the lord of the manor, or other party entitled to the soil thereof, in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next hereinafter mentioned.

Compensation for common lands where not held of a manor how to be ascertained.

CII. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such lands, to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county, or in the respective counties, and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or, if there be no such church, some other place in the neighbourhood to which notices are usually affixed;

A meeting of the parties interested to be convened

Meeting to
appoint a
committee.

Committee to
agree with
the promoters
of the under-
taking.

Disputes to
be settled as
in other
cases.

If no com-
mittee be ap-
pointed, the
amount to be
determined
by a sur-
veyor.

Upon pay-
ment of com-
pensation
payable to
commoners
the lands to
vest.

and if such lands be parcel or holden of a manor, a like notice shall be given to the lord of such manor.

CIII. It shall be lawful for the meeting so called to appoint a committee, not exceeding five in number, of the parties entitled to any such rights; and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

CIV. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights, and all matters relating thereto, for and on behalf of themselves and all other parties interested therein; and all such parties shall be bound by such agreement; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or of any three of them, for such compensation, shall be an effectual discharge for the same; and such compensation, when received, shall be apportioned by the committee among the several persons interested therein, according to their respective interests; but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or nonapplication thereof.

CV. If, upon such committee being appointed, they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation.

CVI. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or if, taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a surveyor, to be appointed by two justices, as hereinbefore provided in the case of parties who cannot be found.

CVII. Upon payment or tender to such committee, or any three of them, or if there shall be no such committee then upon deposit in the bank in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking, freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery, by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested, as it shall think fit.

And with respect to lands subject to mortgage, be it enacted as follows:

CVIII. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagees of any such lands which may be required for the purposes of the special act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affects such lands solely, or jointly with any other lands not required for the purposes of the special act, and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

CIX. If, in either of the cases aforesaid, upon such payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the bank, in the manner provided by this act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and

Lands in Mortgage.

Power to redeem mortgages.

Deposit of mortgage money on refusal to accept.

Sum to be paid when mortgage exceeds the value of the lands.

they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

CX. If any such mortgaged lands shall be of less value than the principal, interest and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage debt so far as the same will extend, and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Deposit of money when refused on tender.

CXI. If, upon such payment or tender as aforesaid being made, any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the bank, in the manner provided by this act in like cases, and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless, all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

Sum to be paid where part only of mortgaged lands taken.

CXII. If a part only of any such mortgaged lands be required for the purposes of the special act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one

part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be endorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

CXIII. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the bank, in the manner provided by this act, in the case of monies required to be deposited in such bank, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

CXIV. Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions

Deposit of money when refused on tender.

Compensation to be made in certain cases if mortgage

paid off before the stipulated time.

hereinbefore contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the re-investment of the sum so paid off, such costs in case of difference to be taxed and payment thereof enforced in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-investing the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision hereinbefore contained.

Rentcharges.

And with respect to lands charged with any rent service, rentcharge, or chief or other rent, or other payment or incumbrance not hereinbefore provided for, be it enacted as follows:

Release of lands from rentcharges.

CXV. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special act, the same shall be determined as in other cases of disputed compensation.

Release of part of lands from charge.

CXVI. If part only of the lands charged with any such rent service, rentcharge, chief or other rent, payment, or incumbrance, be required to be taken for the purposes of the special act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two justices; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

Deposit in case of refusal to release.

CXVII. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fail so to

do, or if he fail to adduce good title to such charge, to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the bank in the manner hereinbefore provided in like cases, and also, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the rent service, rentcharge, chief or other rent, payment, or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

CXVIII. If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or if they be a corporation shall affix their common seal to a memorandum of such release indorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special act, and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

Charge to continue on lands not taken.

And with respect to lands subject to leases, be it enacted as follows :

Leases.

CXIX. If any lands shall be comprised in a lease, for a term of years unexpired, part only of which lands shall be required for the purposes of the special act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the spe-

Where part only of lands under lease taken, the rent to be apportioned.

cial act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special act, in the same manner as they would have done in case such part only of the land had been included in the lease.

Tenants to be compensated.

CXX. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works.

Compensation to be made to tenants at will, &c.

CXXI. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an in-coming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special act.

Where greater interest claimed than from year to year, lease to be produced.

CXXII. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

Limit of time for compulsory purchase.

CXXIII. And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed, not after the expiration of three years from the passing of the special act.

And with respect to interests in lands which have by mistake been omitted to be purchased, be it enacted as follows:

CXXIV. If at any time after the promoters of the undertaking shall have entered upon any lands which under the provisions of this or the special act, or any act incorporated therewith, they were authorized to purchase, and which shall be permanently required for the purposes of the special act, any party shall appear to be entitled to any estate, right or interest in or charge affecting such lands which the promoters of the undertaking shall, through mistake or inadvertence, have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided within six months after notice of such estate, right, interest or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase-money or compensation by the promoters of the undertaking, so far as such mesne profits or interests may be recoverable in law or equity; and such purchase-money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this act the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest or charge before their entering upon such land, or as near thereto as circumstances will admit.

CXXV. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

CXXVI. In addition to the said purchase-money, compensation or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full costs and

Interests omitted to be purchased.

Promoters of the undertaking empowered to purchase interests in lands the purchase whereof may have been omitted by mistake.

How value such lands be estimate

Promoters of the undertaking to pay the costs of litigation as to such lands.

expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special act, or any act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows:

Sale of superfluous Land.

Lands not wanted to be sold, or in default to vest in owners of adjoining lands.

CXXVII. Within the prescribed period, or if no period be prescribed within ten years after the expiration of the time limited by the special act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase-money arising from such sales to the purposes of the special act; and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

Lands to be offered to owner of lands from which they were originally taken, or to adjoining owners.

CXXVIII. Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town, or be lands built upon or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

Right of pre-emption to be claimed within six weeks.

CXXIX. If any such persons be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking, or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

Differences as

CXXX. If any person entitled to such pre-emption be desirous

of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

CXXXI. Upon payment or tender to the promoters of the undertaking of the purchase-money so agreed upon or determined as aforesaid they shall convey such lands to the purchasers thereof by deed under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation under the hands and seals of the promoters of the undertaking, or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase-money in such receipt expressed to be received.

to price to be settled by arbitration.

Lands to be conveyed to the purchasers.

CXXXII. In every conveyance of lands to be made by the promoters of the undertaking under this or the special act the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say,)

Effect of the word "grant" in conveyances.

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them :

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns (as the case may be), shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors from all incumbrances created by the promoters of the undertaking :

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators or assigns (as the case may be), by the promoters of the undertaking, or their successors, and all other persons claiming under them :

And all such grantees, and their several successors, heirs, executors administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them, assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

Land tax and poor's rate to be made good.

CXXXIII. And be it enacted, that if the promoters of the undertaking become possessed by virtue of this or the special act, or any act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor's rate, be liable to make good the deficiency in the several assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special act; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so in accordance with the powers in that behalf given by the acts for the redemption of the land tax.

Service of notices upon company.

CXXXIV. And be it enacted, that any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary the solicitor of the said promoters.

Tender of amends.

CXXXV. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special act, or any act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

Recovery of Penalties.

And with respect to the recovery of forfeitures, penalties, and costs, be it enacted as follows:

Penalty on witnesses making default.

CXLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this

or the special act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

CXLV. No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts.

Proceedings
not to be
quashed for
want of form.

CXLIX. And be it enacted, that any person who upon any examination upon oath under the provisions of this or the special act, or any act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Persons
giving false
evidence
liable to
penalties of
perjury.

SCHEDULES referred to in the foregoing Act.

SCHEDULE (A.)

Form of Conveyance.

I ———, of ———, in consideration of the sum of ——— paid to me [*or, as the case may be*, into the Bank of England, in the name and with the privity of the accountant-general of the Court of Chancery, ex parte "The promoters of the undertaking" [*naming them*], or to A. B., of ———, and C. D., of ———, two trustees appointed to receive the same], pursuant to the [*here name the special act*], by the [*here name the company or other promoters of the undertaking*], incorporated [*or constituted*] by the said act, do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by the said act empowered to convey, to hold the premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said act. In witness whereof I have hereunto set my hand and seal, the ——— day of ———, in the year of our Lord ———.

SCHEDULE (B.)

Form of Conveyance on Chief Rent.

I ———, of ———, in consideration of the rent-charge to be paid to me, my heirs and assigns, as hereinafter mentioned, by

"the promoters of the undertaking" [*naming them*], incorporated [*or constituted*] by virtue of the [*here name the special act*], do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof, to hold the said premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said act, they the said company [*or other description*], their successors and assigns, yielding and paying unto me, my heirs and assigns, one clear yearly rent of —, by equal quarterly [*or half-yearly, as agreed upon,*] portions henceforth, on the [*stating the days*], clear of all taxes and deductions. In witness whereof I hereunto set my hand and seal, the — day of —, in the year of our Lord —.

10 VICT. c. 15(c).

An Act for consolidating in One Act certain Provisions usually contained in Acts authorizing the making of Gasworks for supplying Towns with Gas. [23rd April, 1847.]

Extent of
act.

WHEREAS it is expedient to comprise in one general act sundry provisions usually contained in acts of parliament authorizing the construction of gasworks for supplying towns with gas, and that as well for avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that this act shall extend only to such gasworks as shall be authorized by any act of parliament hereafter to be passed which shall declare that this act shall be incorporated therewith, and all the clauses of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other act which shall be incorporated therewith, form part of such act, and be construed therewith as forming one act.

Interpreta-
tions in this
act:
"Special
act."

And with respect to the construction of this act and any act incorporated therewith, be it enacted as follows:

II. The expression "the special act," used in this act, shall be construed to mean any act which shall be hereafter passed authorizing the construction of gasworks, and with which this act shall

(c) Referred to, *ante*, p. 342.

be so incorporated as aforesaid; and the expression "the undertaking" shall mean the gasworks and the works connected therewith by the special act authorized to be constructed; and the expression "the undertakers" shall mean the persons by the special act authorized to construct the gasworks.

III. The following words and expressions in both this and the special act, and any act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

The expression "the gasworks" shall mean the gasworks and the works connected therewith by the special act authorized to be constructed:

The word "month" shall mean calendar month:

The expression "superior courts," where the matter submitted to the cognizance of the superior courts arises in England, shall mean her majesty's superior courts of record at Westminster, and shall include the court of common pleas of the county palatine of Lancaster and the court of pleas of the county of Durham.

And with respect to citing this act or any part thereof, be it enacted as follows:

IV. In citing this act in other acts of parliament and in legal instruments it shall be enough to use the expression "The Gasworks Clauses Act, 1847."

V. For the purpose of incorporating part only of this act with any act hereafter to be passed, it shall be enough to describe the clauses of this act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this act, with the exception of the clauses so described, shall be incorporated with such act, and thereupon all the clauses of this act so incorporated shall, save so far as they are expressly varied or excepted by such act, form part of such act; and such act shall be construed as if such clauses were set forth therein with reference to the matter to which such act relates.

And with respect to the provision for guarding against fouling water, or other nuisance from the gas, be it enacted as follows:

XXI. If the undertakers shall at any time cause or suffer to be brought or to flow into any stream, reservoir, or aqueduct, pond, or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, pond, or place for water shall be fouled, the undertakers shall forfeit for every such offence the sum of two hundred pounds.

XXII. The said penalty of two hundred pounds shall be recovered, with full costs of suit, in any of the superior courts, by the person into whose water such washing or other substance shall be conveyed or shall flow, or whose water shall be fouled by any

"the undertaking:"

"the undertakers."

Interpretations in this and the special act:

"The gasworks:"

"Month:"

"Superior courts."

Citing the Act.

Short title of the act.

Form in which portions of this act may be incorporated in other acts.

Nuisance from Gas.

Penalty on undertakers for causing water to be corrupted.

Penalty to be sued for in superior court within six months.

such act as aforesaid; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased.

Daily penalty during the continuance of the offence.

XXIII. In addition to the said penalty of two hundred pounds (and whether such penalty shall have been recovered or not) the undertakers shall forfeit the sum of twenty pounds (to be recovered in the like manner) for each day during which such washing or other substance shall be brought or shall flow as aforesaid, or the act by which such water shall be fouled shall continue after the expiration of twenty-four hours from the time when notice of the offence shall have been served on the undertakers by the person into whose water such washing or other substance shall be brought or shall flow, or whose water shall be fouled thereby, and such penalty shall be paid to such last-mentioned person.

Daily penalty during escape of gas after notice.

XXIV. Whenever any gas shall escape from any pipe laid down or set up by or belonging to the undertakers, they shall, immediately after receiving notice thereof in writing, prevent such gas from escaping; and in case the undertakers shall not within twenty-four hours next after service of such notice effectually prevent the gas from escaping, and wholly remove the cause of complaint, they shall for every such offence forfeit the sum of five pounds for each day during which the gas shall be suffered to escape after the expiration of twenty-four hours from the service of such notice.

Penalty if water contaminated by gas.

XXV. Whenever any water within the limits of the special act shall be fouled by the gas of the undertakers, they shall forfeit to the person whose water shall be so fouled for every such offence a sum not exceeding twenty pounds, and a further sum not exceeding ten pounds for each day during which the offence shall continue after the expiration of twenty-four hours from the service of notice of such offence.

Power to examine gas pipes to ascertain cause of contamination, if notice be given of the same.

XXVI. For the purpose of ascertaining whether such water be fouled by the gas of the undertakers the person to whom the water supposed to be fouled shall belong may dig up the ground and examine the pipes, conduits, and works of the undertakers; provided that such person, before proceeding so to dig and examine, shall give twenty-four hours' notice in writing to the undertakers of the time at which such digging and examination is intended to take place, and shall give the like notice to the persons having the control or management of the road, pavement, or place where such digging is to take place; and they shall be subject to the like obligation of reinstating the said road and pavement, and the same penalties for delay or any nonfeasance or misfeasance therein, as are hereinbefore provided with respect to roads and pavements broken up by the undertakers for the purpose of laying their pipes.

Expenses to abide result of examination.

XXVII. If, upon any such examination, it appear that such water has been fouled by any gas belonging to the undertakers, the expenses of the digging, examination, and repair of the street or place disturbed in any such examination shall be paid by the

undertakers; but if upon such examination it appear that the water has not been fouled by the gas of the undertakers, the person causing such examination to be made shall pay all such expenses, and shall also make good to the undertakers any injury which may be occasioned to their works by such examination.

XXVIII. The amount of the expenses of every such examination and repair, and of any injury done to the undertakers, shall, in case of any dispute about the same, together with the costs of ascertaining and recovering the same, be ascertained and recovered in the same manner as damages for the ascertaining and recovery whereof no special provision is made are to be ascertained and recovered.

XXIX. Nothing in this or the special act contained shall prevent the undertakers from being liable to an indictment for nuisance, or to any other legal proceeding to which they may be liable, in consequence of making or supplying gas.

And with respect to access to the special act, be it enacted as follows:

XLV. The undertakers shall at all times, after the expiration of six months after the passing of the special act keep in their principal office of business a copy of the special act, printed by the printers to her majesty, or some of them, and shall also, within the space of such six months, deposit in the office of the clerk of the peace of the county in which the undertaking is situated, a copy of such special act so printed as aforesaid; and the said clerk of the peace shall receive, and they and the undertakers respectively shall keep, the said copies of the special act, and shall permit all persons interested to inspect the same and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an act passed in the first year of the reign of her present majesty, intituled "An Act to compel clerks of the peace for counties, and other persons, to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

XLVI. If the undertakers fail to keep or deposit as hereinbefore mentioned any of the said copies of the special act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

How expenses to be ascertained.

Nothing to exempt undertakers from being indicted for a nuisance.

Access to Special Act.

Copies of special act to be kept by undertakers in their office, and deposited with the clerks of the peace, &c., and be open to inspection.

7 W. 4 &
1 Vict. c. 68.

Penalty on undertakers failing to keep or deposit such copies.

10 VICT. c. 16 (d).

An Act for consolidating in One Act certain Provisions usually contained in Acts with respect to the Constitution and Regulation of Bodies of Commissioners appointed for carrying on Undertakings of a public Nature.

[23rd April, 1847.]

Extent of
act.

WHEREAS it is expedient to comprise in one act sundry provisions usually contained in acts of parliament authorizing the execution of undertakings of a public nature by bodies of commissioners, trustees, or other persons, not being joint stock companies, and that as well for avoiding the necessity for repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that this act shall extend only to such undertakings or commissioners as shall be authorized or constituted by any act of parliament hereafter to be passed, which shall declare that this act shall be incorporated therewith; and all the clauses of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the commissioners constituted by such act, and to the undertaking for carrying on which such commissioners shall be constituted, so far as the same shall be applicable thereto respectively; and such clauses, with the clauses of every other act which shall be incorporated therewith, shall, save as aforesaid, form part of such act, and be construed therewith as forming one act.

Interpreta-
tions in this
act:

"The special
act:"

"prescribed:"

"the under-
taking:"

And with respect to the construction of this act, and any act incorporated therewith, be it enacted as follows:

II. The expression "the special act" used in this act shall be construed to mean any act which shall be hereafter passed, constituting a body of commissioners as hereinafter defined for the purpose of carrying on any undertaking, and with which this act shall be incorporated; and the word "prescribed" used in this act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act; and the sentence in which such word occurs shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special act" had been used; and the expression "the undertaking" shall mean the undertaking or works, of whatever nature, which shall by the special act be authorized to be executed

(d) Referred to, *ante*, p. 134.

or carried on; and the expression "the commissioners" shall mean the commissioners, trustees, undertakers, or other persons or body corporate constituted by the special act, or thereby intrusted with powers for executing the undertaking.

And with respect to citing this act or any part thereof, be it enacted as follows :

IV. In citing this act in other acts of parliament, and in legal instruments, it shall be sufficient to use the expression "The Commissioners Clauses Act, 1847."

V. For the purpose of incorporating part only of this act with any act of parliament hereafter to be passed, it shall be enough to describe the clauses of this act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this act with the exception of the clauses so described, shall be incorporated with such act; and thereupon all the clauses of this act so incorporated shall, save so far as they are expressly varied or excepted by such act, form part of such act, and such act shall be construed as if such clauses were set forth therein with reference to the matter to which such act relates.

And with respect to the mortgages to be executed by the commissioners, be it enacted as follows :

LXXV. Every mortgage of rates or other property authorized to be made under the provisions of this or the special act shall be by deed duly stamped, in which the consideration shall be duly stated; and every such deed shall be under the common seal of the commissioners if they be a body corporate, or if they be not a body corporate shall be executed by the commissioners or any five of them, and may be according to the form in the schedule (B.) to this act annexed or to the like effect; and the respective mortgagees or assignees in security shall be entitled one with another to their respective proportions of the rates and assessments or other property comprised in such mortgages respectively, according to the respective sums in such mortgages mentioned to be advanced by such mortgagees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another by reason of the priority of advancing such monies, or of the dates of any such mortgages respectively.

LXXVI. A register of mortgages in security shall be kept by the clerk to the commissioners, and where by the special act the commissioners are authorized or required to raise separate sums on separate rates or other property, a separate register shall be kept for each class of mortgages, and within fourteen days after the date of any mortgage an entry or memorial of the number and date thereof, and of the names of the parties thereto, with their proper additions, shall be made in the proper register; and every such register may be perused at all reasonable times by any person interested in any such mortgage without fee or reward.

LXXVII. Any person entitled to any such mortgage may transfer his right and interest therein to any other person; and

"the commissioners."

Short title of this act.

Form in which portions of this act may be incorporated with other acts.

Mortgages.

Form of mortgages.

Register of mortgages to be kept, and to be open to inspection.

Transfers of mortgages.

every such transfer shall be by deed duly stamped, wherein the consideration shall be truly stated; and every such transfer may be according to the form in the schedule (C.) to this act annexed, or to the like effect.

Register
transfers to
be kept.

LXXXVIII. Within thirty days after the date of every such transfer, if executed within the united kingdom, or otherwise within thirty days after the arrival thereof in the united kingdom, it shall be produced to the clerk to the commissioners, and thereupon such clerk shall cause an entry or memorial thereof to be made, in the same manner as in the case of the original mortgage, and for such entry the clerk may demand a sum not exceeding five shillings; and after such entry every such transfer shall entitle the transferee, his executors, administrators, or assigns, to the full benefit of the original mortgage, and the principal and interest thereby secured; and such transferee may in like manner assign or transfer the same again, toties quoties; and it shall not be in the power of any person, except the person to whom the same shall have been last transferred, his executors, administrators, or assigns, to make void, release, or discharge the mortgage so transferred, or any money thereby secured.

Interest on
mortgages
to be paid
half-yearly.

LXXXIX. Unless otherwise provided by any mortgage, the interest of the money borrowed thereupon shall be paid half-yearly to the several parties entitled thereto.

Power to
borrow
money at a
lower rate
of interest
to pay off
securities at
a higher rate.

LXXX. If the commissioners can at any time borrow or take up any sum of money at a lower rate of interest than any securities given by them and then be in force shall bear, they may borrow such sum at such lower rate as aforesaid, in order to pay off and discharge the securities bearing such higher rate of interest, and may charge the rates and other property, which they may be authorized to mortgage or assign in security under this or the special act, or any part thereof, with payment of such sum and such lower rate of interest, in such manner and subject to such regulations as are herein contained with respect to other monies borrowed on mortgage.

Repayment
of money
borrowed at
a time and
place agreed
upon.

LXXXI. The commissioners may, if they think proper, fix a period for the repayment of all principal monies borrowed under the provisions of this or the special act, with the interest thereof, and in such case the commissioners shall cause such period to be inserted in the mortgage deed; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to receive such principal money and interest, and if no other place of payment be inserted in such deed such principal and interest shall be payable at the office of the commissioners.

Repayment
of money
borrowed
when no
time or place
has been
agreed upon.

LXXXII. If no time be fixed in the mortgage deed for the repayment of the money so borrowed, the party entitled to receive such money may, at the expiration or at any time after the expiration of twelve months from the date of such deed, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months' previous notice for that purpose, and in the like case the commis-

sioners may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or creditor shall be delivered to the clerk or left at the office of the commissioners, and if given by the commissioners shall be given either personally to such mortgagee or creditor, or left at his residence, or if such mortgagee or creditor be unknown to the commissioners, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the London Gazette.

LXXXIII. If the commissioners shall have given notice of their intention to pay off any such mortgage at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable thereon, unless, on demand of payment made pursuant to such notice or at any time thereafter, the commissioners fail to pay the principal and interest due at the expiration of such notice on such mortgage.

Interest to cease on expiration of notice to pay off a mortgage debt.

LXXXIV. In order to discharge the principal money borrowed as aforesaid on security of any of the rates, the commissioners shall every year appropriate and set apart out of such rates respectively a sum equal to the prescribed part, and if no part be prescribed one-twentieth part of the sums so borrowed respectively, as a sinking fund to be applied in paying off the respective principal monies so borrowed, and shall from time to time cause such sinking fund to be invested in the purchase of exchequer bills or other government securities, and to be increased by accumulation in the way of compound interest or otherwise, until the same respectively shall be of sufficient amount to pay off the principal debts respectively to which such sinking fund shall be applicable, or some part thereof, which the commissioners shall think ought then to be paid off, at which time the same shall be so applied in paying off the same in manner hereinafter mentioned.

Monies borrowed on security of rates to be paid off in a limited period.

LXXXV. Whenever the commissioners shall be enabled to pay off one or more of the mortgages which shall be then payable, and shall not be able to pay off the whole of the same class, they shall decide the order in which they shall be paid off by lot among the class to which such one or more of the mortgages belong, and shall cause a notice signed by their clerk to be given to the persons entitled to the money to be paid off, pursuant to such lot, and such notice shall express the principal sum proposed to be paid off, and that the same will be paid, together with the interest due thereon, at a place to be specified, at the expiration of six months from the date of giving such notice.

Mode of paying off mortgages.

LXXXVI. Where by the special act the mortgagees of the commissioners are empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due to them, by the appointment of a receiver, then if, within thirty days after the interest accruing upon any such mortgage

Arrears of interest, when to be enforced by appointment of a receiver.

Arrears of
principal and
interest.

has become payable, and after demand thereof in writing, the same be not paid, the mortgagee may, without prejudice to his right to sue for the interest so in arrear in any of the superior courts, require the appointment of a receiver, by an application to be made as hereinafter provided; and if within six months after the principal money owing upon any such mortgage has become payable, and after demand thereof in writing, the same be not paid, together with all interest due in respect thereof, the mortgagee, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any of the superior courts may, if his debt amount to the prescribed sum, alone, or, if his debt do not amount to the prescribed sum, he may, in conjunction with other mortgagees whose debts being so in arrear after demand as aforesaid, together with his, amount to the prescribed sum, require the appointment of a receiver, by an application to be made as hereinafter provided.

As to the
appointment
of a receiver

LXXXVII. Every application for a receiver in the cases aforesaid shall be made to two justices, and on any such application such justices may by order in writing, after hearing the parties, appoint some person to receive the whole or a competent part of the rates or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the rates or sums aforesaid, be fully paid; and upon such appointment being made all such rates and sums of money as aforesaid, or such part thereof as may be ordered by the said justices or sheriff, shall be paid to the person so to be appointed, and the money so paid shall be so much money received by or to the use of the party to whom such interest or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed, and after such interest and costs, or such principal, interest, and costs, have been so received, the power of such receiver shall cease.

Account
books to be
open to the
inspection of
mortgagees.

LXXXVIII. The books of account of the commissioners shall be open at all reasonable times to the inspection of the respective mortgagees of the commissioners, with liberty to take extracts therefrom, without fee or reward.

SCHEDULES to which the foregoing Act refers.

SCHEDULE (B.) SECT. 75.

Form of Mortgage.

By virtue of [*here name the special act*], we [*here name the corporation if the commissioners be incorporated, or, if not incorporated, five of the commissioners,*] appointed in pursuance of the said act, in consideration of the sum of ——— paid to the treasurer to the said commissioners by A. B. of ——— for the purposes of the said act, do grant and assign unto the said A. B., his executors, administrators, and assigns, such proportion of the rates, rents, profits, and other monies arising or accruing by virtue of the said act from [*here describe the rates or other property proposed to be mortgaged*] as the said sum of ——— doth or shall bear to the whole sum which is or shall be borrowed upon the credit of the said rates, rents, profits, or monies, to hold to the said A. B., his executors, administrators, and assigns, from this day until the said sum of ——— with interest at ——— per centum per annum for the same, shall be fully paid and satisfied (the principal sum to be repaid at the end of ——— years from the date hereof [*in case any period be agreed upon for that purpose*]). Given under our corporate seal [*or, in witness whereof we have hereunto set our hands and seals, as the case may be*], this ——— day of ——— one thousand eight hundred and ———.

SCHEDULE (C.) SECT. 77.

Form of Transfer of Mortgage.

I, A. B. of ——— in consideration of the sum of ——— paid to me by C. D. of ——— do hereby transfer to the said C. D., his executors, administrators, and assigns, a certain mortgage, number ——— made by "the commissioners for executing the [*here name the special act*] to ——— bearing date the ——— day of ——— for securing the sum of ——— and ——— interest [*or, if such transfer be by endorsement, the within security*], and all my right, estate, and interest in and to the money thereby secured, and in and to the rates, rents, profits, or other monies thereby assigned. In witness whereof I have hereunto set my hand and seal, this ——— day of ——— one thousand eight hundred and ———.

11 & 12 VICT. c. 43 (c).

An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions, within England and Wales, with respect to summary Convictions and Orders.

[14th August 1848.]

In all cases where information shall be laid or complaint made of offences committed, justices may issue summons to persons to answer the same.

How summons to be served.

Justices not obliged to issue summonses in certain cases.

WHEREAS it would conduce much to the improvement of the administration of justice within England and Wales, so far as respects summary convictions, and orders to be made by her majesty's justices of the peace therein, if the several statutes and parts of statutes relating to the duties of such justices in respect of such summary convictions and orders were consolidated, with such additions and alterations as may be deemed necessary, and that such duties should be clearly defined by such positive enactment: be it therefore declared and enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that in all cases where an information shall be laid before one or more of her majesty's justices of the peace for any county, riding, division, liberty, city, borough, or place within England or Wales, that any person has committed or is suspected to have committed any offence or act within the jurisdiction of such justice or justices for which he is liable by law, upon a summary conviction for the same before a justice or justices of the peace, to be imprisoned or fined, or otherwise punished, and also in all cases where a complaint shall be made to any such justice or justices upon which he or they have or shall have authority by law to make any order for the payment of money or otherwise, then and in every such case it shall be lawful for such justice or justices of the peace to issue his or their summons directed to such person, stating shortly the matter of such information or complaint, and requiring him to appear at a certain time and place before the same justice or justices, or before such other justice or justices of the same county, riding, division, liberty, city, borough, or place as shall then be there, to answer to the said information or complaint, and to be further dealt with according to law; and every such summons shall be served by a constable or other peace officer, or other person to whom the same shall be delivered, upon the person to whom it is so directed, by delivering the same to the party personally, or by leaving the same with some person for him at his last or most usual place of abode; and the constable, peace officer, or person who shall serve the same in manner aforesaid shall attend at the time and place and before the justices in the said summons mentioned, to depose, if necessary, to the service of the said summons: provided always, that nothing herein mentioned shall oblige any justice or justices of the peace to issue any such summons in any case where the application for any order of justices is by law to be made *ex parte*: provided also, that no

(c) Referred to, *ante*, p. 373.

objection shall be taken or allowed to any information, complaint, or summons, for any alleged defect therein in substance or in form, or for any variance between such information, complaint, or summons and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint as hereinafter mentioned; but if any such variance shall appear to the justice or justices present and acting at such hearing to be such that the party so summoned and appearing has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day.

No objection allowed for want of form.

II. And be it enacted, that if the person so served with a summons as aforesaid shall not be and appear before the justice or justices at the time and place mentioned in such summons, and it shall be made to appear to such justice or justices, by oath or affirmation, that such summons was so served what shall be deemed by such justice or justices to be a reasonable time before the time therein appointed for appearing to the same, then it shall be lawful for such justice or justices if he or they shall think fit, upon oath or affirmation being made before him or them substantiating the matter of such information or complaint to his or their satisfaction, to issue his or their warrant to apprehend the party so summoned, and to bring him before the same justice or justices, or before some other justice or justices of the peace in and for the same county, riding, division, liberty, city, borough, or place, to answer to the said information or complaint, and to be further dealt with according to law; or upon such information being laid as aforesaid for any offence punishable on conviction the justice or justices before whom such information shall have been laid may, if he or they shall think fit, upon oath or affirmation being made before him or them substantiating the matter of such information to his or their satisfaction, instead of issuing such summons as aforesaid, issue in the first instance his or their warrant for apprehending the person against whom such information shall have been so laid, and bringing him before the same justice or justices, or before some other justice or justices of the peace in and for the same county, riding, division, liberty, city, borough, or place, to answer to the said information, and to be further dealt with according to law; or if, where a summons shall be so issued as aforesaid, and upon the day and at the place appointed in and by the said summons for the appearance of the party so summoned, such party shall fail to appear accordingly in obedience to such summons, then and in every such case, if it be proved upon oath or affirmation to the justice or justices then present that such summons was duly served upon such party a reasonable time before the time so appointed for his appearance as aforesaid, it shall be lawful for such justice or justices of the peace to proceed ex parte to the hearing of such information or complaint, and to adjudicate thereon, as fully and effectually, to all

If summons be not obeyed, justices may issue warrant;

or may issue warrant in the first instance;

or if summons, having been duly served, be not obeyed, the justices may proceed ex parte.

B.

A A

Form of
warrant.

Where and
how warrant
may be
executed.

Certain pro-
visions of
11 & 12 Vict.
c. 42, as to
backing of
warrants to
extend to
warrants
issued under
this act.

intents and purposes, as if such party had personally appeared before him or them in obedience to the said summons.

III. And be it enacted, that every such warrant to apprehend a defendant, that he may answer to any such information or complaint as aforesaid, shall be under the hand and seal, or hands and seals, of the justice or justices issuing the same, and may be directed either to any constable or other person by name, or generally to the constable of the pariah or other district within which the same is to be executed without naming him, or to such constable, and all other constables, within the county or other district within which the justice or justices issuing such warrant hath or have jurisdiction, or generally to all the constables within such last-mentioned county or district; and it shall state shortly the matter of the information or complaint on which it is founded, and shall name or otherwise describe the person against whom it has been issued; and it shall order the constable or other person to whom it is directed to apprehend the said defendant, and to bring him before one or more justice or justices of the peace (as the case may require) of the same county, riding, division, liberty, city, borough or place to answer to the said information or complaint, and to be further dealt with according to law; and that it shall not be necessary to make such warrant returnable at any particular time, but the same may remain in full force until it shall be executed; and such warrant may be executed by apprehending the defendant at any place within the county, riding, division, liberty, city, borough or place within which the justices issuing the same shall have jurisdiction, or, in case of fresh pursuit, at any place in the next adjoining county or place within seven miles of the border of such first-mentioned county, riding, division, liberty, city, borough or place without having such warrant backed as hereinafter mentioned; and in all cases where such warrant shall be directed to all constables or peace officers within the county or other district within which the justice or justices issuing the same shall have jurisdiction, it shall be lawful for any constable, headborough, tithingman, borsholder or other peace officer for any parish, township, hamlet or place situate within the limits of the jurisdiction for which such justice or justices shall have acted when he or they granted such warrant, to execute such warrant in like manner as if such warrant were directed specially to such constable by name, and notwithstanding that the place in which such warrant shall be executed shall not be within the pariah, township, hamlet or place for which he shall be such constable, headborough, tithingman, borsholder or other peace officer; and such of the provisions and enactments contained in a certain act of parliament made and passed in this present session of parliament, intituled "An Act to facilitate the Performance of the Duties of Justice of the Peace out of Sessions within England and Wales with respect to Persons charged with indictable Offences," as to the backing of any warrant, and the indorsement thereon by a justice of the peace or other officer, authorizing the person bringing

such warrant, and all other persons to whom the same was originally directed, to execute the same within the jurisdiction of the justice or officer so making such indorsement, as are applicable to the provisions of this act, shall extend to all such warrants, and to all warrants of commitment issued under and by virtue of this act, in as full and ample a manner as if the said several provisions and enactments were here repeated and made parts of this act: provided always, that no objection shall be taken or allowed to any such warrant to apprehend a defendant so issued upon any such information or complaint as aforesaid under or by virtue of this act, for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the informant or complainant as hereinafter mentioned; but if any such variance shall appear to the justice or justices present and acting at such hearing to be such that the party so apprehended under such warrant has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the meantime to commit the said defendant to the house of correction or other prison, lock-up house, or place of security, or to such other custody as the said justice or justices shall think fit, or to discharge him upon his entering into a recognizance, with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned: provided always, that in all cases where a defendant shall be discharged upon recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying upon the back of the said recognizance the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

V. And be it enacted, that every person who shall aid, abet, counsel or procure the commission of any offence which is or hereafter shall be punishable on summary conviction shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable on conviction to the same forfeiture and punishment as such principal offender is or shall be by law liable, and may be proceeded against and convicted either in the county, riding, division, liberty, city, borough or place where such principal offender may be convicted, or in that in which such offence of aiding, abetting, counselling or procuring may have been committed.

No objection allowed for want of form in the warrant, or for any variance between it and evidence adduced; but if the party charged is deceived by the variation, he may be committed or discharged upon recognizance;

but if he fail to re-appear the justice may transmit the recognizance to the clerk of the peace.

Prosecution and punishment of aiders and abettors in the commission of offences.

VI. And be it enacted, that such of the provisions and enact- Provisions of

11 & 12 Vict.
c. 42, as to
justices in
one county,
&c., acting
for another
to extend to
this act.

ments in the act aforesaid made and passed in this present session of parliament, intituled "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to Persons charged with indictable Offences," whereby a justice of the peace for one county, riding, division, liberty, city, borough or place may act for the same whilst residing or being in an adjoining county, riding, division, liberty, city, borough or place of which he is also a justice of the peace, or whereby a justice of the peace for any county at large, riding, division or liberty may act as such within any city, town or precinct next adjoining thereto or surrounded thereby, being a county of itself or otherwise having exclusive jurisdiction, as are applicable to the provisions of this act, shall be deemed to be incorporated into this act, and to extend to all acts required of or to be performed by justices of the peace under or by virtue of this act, in as full and ample a manner as if the said provisions and enactments were here repeated and made parts of this act.

Power to
justice to
summon
witnesses to
attend and
give evidence.

VII. And be it enacted, that if it shall be made to appear to any justice of the peace, by the oath or affirmation of any credible person, that any person within the jurisdiction of such justice is likely to give material evidence in behalf of the prosecutor or complainant or defendant, and will not voluntarily appear for the purposes of being examined as a witness at the time and place appointed for the hearing of such information or complaint, such justice may and is hereby required to issue his summons to such person under his hand and seal, requiring him to be and appear at a time and place mentioned in such summons before the said justice, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place as shall then be there, to testify what he shall know concerning the matter of the said information or complaint; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by the said summons, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and that a reasonable sum was paid or tendered to him for his costs and expenses in that behalf) it shall be lawful for the justice or justices before whom such person should have appeared to issue a warrant under his or their hands and seals, to bring and have such person, at a time and place to be therein mentioned, before the justice who issued the said summons, or before such other justice or justices of the peace for the same county, riding, division, liberty, city, borough or place as shall then be there, to testify as aforesaid, and which said warrant may, if necessary, be backed as hereinbefore is mentioned, in order to its being executed out of the jurisdiction of the justice who shall have issued the same; or if such justice shall be satisfied, by evidence upon oath or affirmation, that it is

If summons
be not obeyed,
justices may
issue war-
rant.

In certain
cases may
issue warrant

probable that such person will not attend to give evidence without being compelled so to do, then, instead of issuing such summons, it shall be lawful for him to issue his warrant in the first instance, and which, if necessary, may be backed as aforesaid; and if on the appearance of such person so summoned before the said last-mentioned justice or justices, either in obedience to the said summons or upon being brought before him or them by virtue of the said warrant, such person shall refuse to be examined upon oath or affirmation concerning the premises, or shall refuse to take such oath or affirmation, or having taken such oath or affirmation, shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal, any justice of the peace then present, and having there jurisdiction, may by warrant under his hand and seal commit the person so refusing to the common gaol or house of correction for the county, riding, division, liberty, city, borough or place where such person so refusing shall then be, there to remain and be imprisoned for any time not exceeding seven days, unless he shall in the meantime consent to be examined and to answer concerning the premises.

VIII. And be it enacted, that in all cases of complaints upon which a justice or justices of the peace may make an order for the payment of money or otherwise it shall not be necessary that such complaint shall be in writing, unless it shall be required to be so by some particular act of parliament upon which such complaint shall be framed.

IX. And be it declared and enacted, that in all cases of informations for any offences or acts punishable upon summary conviction any variance between such information and the evidence adduced in support thereof as to the time at which such offence or act shall be alleged to have been committed shall not be deemed material, if it be proved that such information was in fact laid within the time limited by law for laying the same; and any variance between such information and the evidence adduced in support thereof as to the parish or township in which the offence or act shall be alleged to have been committed shall not be deemed material, provided that the offence or act be proved to have been committed within the jurisdiction of the justice or justices by whom such information shall be heard and determined; and if any such variance, or any variance in any other respect between such information and the evidence adduced in support thereof, shall appear to the justice or justices present and acting at the hearing to be such that the party charged by such information has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the meantime to commit the said defendant to the house of correction or other prison, lock-up house, or place of security, or to such other custody as the said justice or justices shall think fit, or to discharge him upon his entering into a recognizance, with or without surety or sureties, at the discretion of

in the first instance.

Persons appearing on summons, &c., refusing to be examined may be committed.

Complaints for an order need not be in writing.

As to proceedings upon informations for offences punishable on summary convictions.

The party charged, if deceived by variation between information and evidence, may be committed or discharged upon recognizance;

but if he fail to re-appear, the justice may transmit the recognizance to the clerk of the peace.

Manner of making complaint or laying information.

When warrant issued in the first instance, information to be upon oath, &c.

Time limited for such complaint or information.

As to the hearing of complaints and informations.

such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned: provided always, that in all cases where a defendant shall be discharged upon recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying upon the back of the said recognizance the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

X. And be it declared and enacted, that every such complain: upon which a justice or justices of the peace is or are or shall be authorized by law to make an order, and that every information for any offence or act punishable upon summary conviction, unless some particular act of parliament shall otherwise require, may respectively be made or laid without any oath or affirmation being made of the truth thereof; except in cases of informations where the justice or justices receiving the same shall thereupon issue his or their warrant in the first instance to apprehend the defendant as aforesaid, and in every such case where the justice or justices shall issue his or their warrant in the first instance the matter of such information shall be substantiated by the oath or affirmation of the informant, or by some witness or witnesses on his behalf, before any such warrant shall be issued; and every such complaint shall be for one matter of complaint only, and not for two or more matters of complaint; and every such information shall be for one offence only, and not for two or more offences; and every such complaint or information may be laid or made by the complainant or informant in person or by his counsel or attorney or other person authorized in that behalf.

XI. And be it enacted, that in all cases where no time is already or shall hereafter be specially limited for making any such complaint or laying any such information in the act or acts of parliament relating to each particular case, such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose.

XII. And be it enacted, that every such complaint and information shall be heard, tried, determined, and adjudged by one or two or more justice or justices of the peace, as shall be directed by the act of parliament upon which such complaint or information shall be framed, or such other act or acts of parliament as there may be in that behalf; and if there be no such direction in any such act of parliament, then such complaint or information may be heard, tried, determined, and adjudged by any one

justice of the peace for the county, riding, division, liberty, city, borough, or place where the matter of such information shall have arisen; and the room or place in which such justice or justices shall sit to hear and try any such complaint or information shall be deemed an open and public court, to which the public generally may have access, so far as the same can conveniently contain them; and the party against whom such complaint is made or information laid shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf; and every complainant or informant in any such case shall be at liberty to conduct such complaint or information respectively and to have the witnesses examined and cross-examined by counsel or attorney on his behalf.

Places in which justices shall sit to hear complaints, &c., to be deemed an open court.

Parties allowed to plead by counsel or attorney.

XIII. And be it enacted, that if at the day and place appointed in and by the summons aforesaid for hearing and determining such complaint or information the defendant against whom the same shall have been made or laid shall not appear when called, the constable or other person who shall have served him with the summons in that behalf shall then declare upon oath in what manner he served the said summons; and if it appear to the satisfaction of any justice or justices that he duly served the said summons, in that case such justice or justices may proceed to hear and determine the case in the absence of such defendant, or the said justice or justices, upon the non-appearance of such defendant as aforesaid, may, if he or they think fit, issue his or their warrant in manner hereinbefore directed, and shall adjourn the hearing of the said complaint or information until the said defendant shall be apprehended; and when such defendant shall afterwards be apprehended under such warrant he shall be brought before the same justice or justices or some other justice or justices of the same county, riding, division, liberty, city, borough, or place, who shall thereupon, either by his or their warrant, commit such defendant to the house of correction or other prison, lock-up house, or place of security, or, if he or they think fit, verbally to the custody of the constable or other person who shall have apprehended him, or to such other safe custody as he or they shall deem fit, and order the said defendant to be brought up at a certain time and place before such justice or justices of the peace as shall then be there, of which said order the complainant or informant shall have due notice; or if upon the day and at the place so appointed as aforesaid such defendant shall attend voluntarily in obedience to the summons in that behalf served upon him, or shall be brought before the said justice or justices by virtue of any warrant, then, if the complainant or informant, having had such notice as aforesaid, do not appear, by himself, his counsel or attorney, the said justice or justices shall dismiss such complaint or information, unless for some reason he or they shall think proper to adjourn the hearing of the same unto some other day, upon such terms as he or they shall think fit, in which case such justice or justices may commit

If defendant does not appear, justices may proceed to hear and determine, or issue warrant, and adjourn the hearing till defendant is apprehended.

If defendant appear, and complainant, &c., does not, justice may dismiss the complaint, &c., or at discretion adjourn the hearing and commit or discharge defendant.

upon recog-
nizance;

but if he fail
to re-appear,
the justice
may transmit
the recogni-
zance to the
clerk of the
peace.

If both parties
appear, jus-
tice to hear
and determine
the case.

Proceedings
on the hear-
ing of com-
plaints and
informations.

the defendant in the meantime to the house of correction or other prison, lock-up house, or place of security; or to such other custody as such justice or justices shall think fit, or may discharge him upon his entering into a recognizance, with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing shall be so adjourned; and if such defendant shall not afterwards appear at the time and place mentioned in such recognizance, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying on the back of the recognizance the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which the offence shall be laid to have been committed, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant; but if both parties appear, either personally or by their respective counsel or attornies, before the justice or justices who are to hear and determine such complaint or information, then the said justice or justices shall proceed to hear and determine the same.

XIV. And be it enacted, that where such defendant shall be present at such hearing the substance of the information or complaint shall be stated to him, and he shall be asked if he have any cause to show why he should not be convicted, or why an order should not be made against him, as the case may be, and if he thereupon admit the truth of such information or complaint, and show no cause or no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, then the justice or justices present at the said hearing shall convict him or make an order against him accordingly; but if he do not admit the truth of such information or complaint as aforesaid, then the said justice or justices shall proceed to hear the prosecutor or complainant, and such witnesses as he may examine and such other evidence as he may adduce, in support of his information or complaint respectively, and also to hear the defendant and such witnesses as he may examine and such other evidence as he may adduce in his defence, and also to hear such witnesses as the prosecutor or complainant may examine in reply, if such defendant shall have examined any witnesses or given any evidence other than as to his the defendant's general character; but the prosecutor or complainant shall not be entitled to make any observations in reply upon the evidence given by the defendant, nor shall the defendant be entitled to make any observations in reply upon the evidence given by the prosecutor or complainant in reply as aforesaid; and the said justice or justices, having heard what each party shall have to say as aforesaid, and the witnesses and evidence so adduced, shall consider the whole matter, and determine the same, and shall convict or make an order upon the defendant, or dismiss the infor-

mation or complaint, as the case may be; and if he or they convict or make an order against the defendant a minute or memorandum thereof shall then be made, for which no fee shall be paid, and the conviction or order shall afterwards be drawn up by the said justice or justices in proper form, under his or their hand and seal or hands and seals, and he or they shall cause the same to be lodged with the clerk of the peace, to be by him filed among the records of the general quarter sessions of the peace; or if the said justice or justices shall dismiss such information or complaint, it shall be lawful for such justice or justices, if he or they shall think fit, being required so to do, to make an order of dismissal of the same, and shall give the defendant in that behalf a certificate thereof, which said certificate afterwards, upon being produced, without further proof, shall be a bar to any subsequent information or complaint for the same matters respectively against the same party: provided always, that if the information or complaint in any such case shall negative any exemption, exception, proviso, or condition in the statute on which the same shall be framed, it shall not be necessary for the prosecutor or complainant in that behalf to prove such negative, but the defendant may prove the affirmative thereof in his defence, if he would have advantage of the same.

Proviso.

XV. And be it enacted, that every prosecutor of any such information, not having any pecuniary interest in the result of the same, and every complainant in any such complaint as aforesaid, whatever his interest may be in the result of the same, shall be a competent witness to support such information or complaint respectively; and every witness at any such hearing as aforesaid shall be examined upon oath or affirmation, and the justice or justices before whom any such witness shall appear for the purpose of being so examined shall have full power and authority to administer to every such witness the usual oath or affirmation.

Prosecutors and complainants in certain cases to be deemed competent witnesses, and examined upon oath, &c.

XVI. And be it enacted, that before or during such hearing of any such information or complaint it shall be lawful for any one justice, or for the justices present, in their discretion, to adjourn the hearing of the same to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties, or their respective attorneys or agents then present, and in the meantime the said justice or justices may suffer the defendant to go at large, or may commit him to the common gaol or house of correction or other prison, lock-up house, or place of security in the county, riding, division, liberty, city, borough, or place for which such justice or justices shall be then acting, or to such other safe custody as the said justice or justices shall think fit, or may discharge such defendant upon his entering into a recognizance with or without surety or sureties, at the discretion of such justice or justices, conditioned for his appearance at the time and place to which such hearing or further hearing shall be adjourned; and if at the time or place to which such hearing or further hearing shall be so adjourned either or

Power to justices to adjourn the hearing of cases, and commit defendant, or suffer him to go at large, or discharge him upon his own recognizance.

but if he fail to re-appear, the justice may transmit the recognizance to the clerk of the peace.

Power to justice to award costs, which shall be specified in conviction or order of dismissal, and may be recovered by distress.

Power to justice to issue warrant of distress.

both of the parties shall not appear personally, or by his or their counsel or attorneys respectively, before the said justice or justices, or such other justice or justices as shall then be there, it shall be lawful for the justice or justices then there present to proceed to such hearing or further hearing as if such party or parties were present; or if the prosecutor or complainant shall not appear, the said justice or justices may dismiss such information or complaint, with or without costs, as to such justices shall seem fit: provided always, that in all cases where a defendant shall be discharged on recognizance, as aforesaid, and shall not afterwards appear at the time and place mentioned in such recognizance, then the said justice or justices who shall have taken the said recognizance, or any other justice or justices who may then be there present, upon certifying on the back of the recognizance the non-appearance of such accused party, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

XVIII. And be it enacted, that in all cases of summary conviction or of orders made by a justice or justices of the peace it shall be lawful for the justice or justices making the same, in his or their discretion, to award and order in and by such conviction or order that the defendant shall pay to the prosecutor or complainant respectively such costs as to such justice or justices shall seem just and reasonable in that behalf; and in cases where such justice or justices, instead of convicting or making an order as aforesaid, shall dismiss the information or complaint, it shall be lawful for him or them, in his or their discretion, in and by his or their order of dismissal to award and order that the prosecutor or complainant respectively shall pay to the defendant such costs as to such justice or justices shall seem just and reasonable, and the sums so allowed for costs shall in all cases be specified in such conviction or order or order of dismissal aforesaid, and the same shall be recoverable in the same manner and under the same warrants as any penalty or sum of money adjudged to be paid in and by such conviction or order is to be recoverable; and in cases where there is no such penalty or sum to be thereby recovered then such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of such distress by imprisonment, with or without hard labour, for any time not exceeding one calendar month, unless such costs shall be sooner paid.

XIX. And be it enacted, that where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the statute authorizing such conviction or order such penalty, compensation, or sum of money is to be levied upon the goods and chattels of the defendant by distress and sale thereof, and also in cases

where by the statute in that behalf no mode of raising or levying such penalty, compensation, or sum of money, or of enforcing the payment of the same, is stated or provided, it shall be lawful for the justice or justices making such conviction or order, or for any justice of the peace for the same county, riding, division, liberty, city, borough, or place, to issue his or their warrant of distress for the purpose of levying the same, which said warrant of distress shall be in writing under the hand and seal of the justice making the same; and if after delivery of such warrant of distress to the constable or constables to whom the same shall have been directed to be executed sufficient distress shall not be found within the limits of the jurisdiction of the justice granting such warrant, then, upon proof alone being made on oath of the handwriting of the justice granting such warrant before any justice of any other county or place, such justice of such other county or place shall thereupon make an indorsement on such warrant signed with his hand, authorizing the execution of such warrant within the limits of his jurisdiction, by virtue of which said warrant and indorsement the penalty or sum aforesaid, and costs, or so much thereof as may not have been before levied or paid, shall and may be levied by the person bringing such warrant, or by the person or persons to whom such warrant was originally directed, or by any constable or other peace officer of such last-mentioned county or place, by distress and sale of the goods and chattels of the defendant in such other county or place: provided always, that whenever it shall appear to any justice of the peace to whom application shall be made for any such warrant of distress as aforesaid that the issuing thereof would be ruinous to the defendant and his family, or wherever it shall appear to such justice, by the confession of the defendant or otherwise, that he hath no goods or chattels whereon to levy such distress, then and in every such case it shall be lawful for such justice, if he shall deem it fit, instead of issuing such warrant of distress, to commit such defendant to the house of correction, or if there be no house of correction within his jurisdiction then to the common gaol, there to be imprisoned, with or without hard labour, for such time and in such manner as by law such defendant might be so committed in case such warrant of distress had issued, and no goods or chattels could be found whereon to levy such penalty or sum and costs aforesaid.

XX. And be it enacted, that in all cases where a justice of the peace shall issue any such warrant of distress it shall be lawful for him to suffer the defendant to go at large, or verbally or by a written warrant in that behalf, to order the defendant to be kept and detained in safe custody until return shall be made to such warrant of distress, unless such defendant shall give sufficient security, by recognizance or otherwise, to the satisfaction of such justice, for his appearance before him at the time and place appointed for the return of such warrant of distress, or before such other justice or justices for the same county, riding, division, liberty, city, borough, or place as may then be

How warrant
to be backed.

Where the
issuing a
warrant
would be
ruinous to
defendant,
or where
there are no
goods, justice
may commit
him to prison.

Justice, after
issuing war-
rant, may
suffer defen-
dant to go at
large, or order
him into
custody until
return be
made, unless
he gives
security by
recognizance;

but if he fail to re-appear the justice may transmit the recognizance to the clerk of the peace.

there: provided always, that in all cases where a defendant shall give security by recognizance as aforesaid, and shall not afterwards appear at the time and place in such recognizance mentioned, then the said justice who shall have taken the said recognizance, or any justice or justices who may then be there present, upon certifying on the back of the recognizance the non-appearance of the defendant, may transmit such recognizance to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which the offence shall be laid to have been committed, to be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance of the said defendant.

In default of sufficiency of distress justice may commit defendant to prison.

XXI. And be it enacted, that if at the time and place appointed for the return of any such warrant of distress the constable who shall have had the execution of the same shall return that he could find no goods or chattels or no sufficient goods or chattels whereon he could levy the sum or sums therein mentioned, together with the costs of or occasioned by the levying of the same, it shall be lawful for the justice of the peace before whom the same shall be returned to issue his warrant of commitment under his hand and seal, directed to the same or any other constable, reciting the conviction or order shortly, the issuing of the warrant of distress, and the return thereto, and requiring such constable to convey such defendant to the house of correction, or if there be no house of correction then to the common gaol of the county, riding, division, liberty, city, borough, or place for which such justice shall then be acting, and there to deliver him to the keeper thereof, and requiring such keeper to receive the defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, in such manner and for such time as shall have been directed and appointed by the statute on which the conviction or order mentioned in such warrant of distress was founded, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice shall think fit so to order (the amount thereof being ascertained and stated in such commitment), shall be sooner paid.

In all cases of penalties, convictions or orders, where the statute provides no remedy in default of distress, justice may commit defendant to prison.

XXII. And whereas by some acts of parliament justices of the peace are authorized to issue warrants of distress to levy penalties or other sums recovered before them by distress and sale of the offender's goods, but no further remedy is thereby provided in case no sufficient distress be found whereon to levy such penalties; be it therefore enacted, that in all such cases, and in all cases of convictions or orders where the statute on which the same are respectively founded provides no remedy in case it shall be returned to a warrant of distress thereon that no sufficient goods of the party against whom such warrant shall have been issued can be found, it shall nevertheless be lawful for the justice to whom such return is made, or to any other justice of the peace

for the same county, riding, division, liberty, city, borough, or place, if he or they shall think fit, by his warrant as aforesaid, to commit the defendant to the house of correction or common gaol as aforesaid for any term not exceeding three calendar months, unless the sum or sums adjudged to be paid, and all costs and charges of the distress, and of the commitment and conveying of the defendant to prison (the amount thereof being ascertained and stated in such commitment), shall be sooner paid.

XXIII. And be it enacted, that in all cases where the statute by virtue of which a conviction for a penalty or compensation, or an order for the payment of money, is made, makes no provision for such penalty or compensation or sum being levied by distress, but directs that if the same be not paid forthwith, or within a certain time therein mentioned, or to be mentioned in such conviction or order, the defendant shall be imprisoned, or imprisoned and kept to hard labour for a certain time, unless such penalty, compensation, or sum shall be sooner paid, in every such case such penalty, compensation, or sum shall not be levied by distress; but if the defendant do not pay the same, together with costs, if awarded, forthwith, or at the time specified in such conviction, or order for the payment of the same, it shall be lawful for the justice or justices making such conviction or order, or for any other justice of the peace for the same county, riding, division, liberty, city, borough, or place, to issue his or their warrant of commitment under his or their hand and seal or hands and seals, requiring the constable or constables to whom the same shall be directed to take and convey such defendant to the house of correction or common gaol for the county, riding, division, liberty, city, borough, or place aforesaid, as the case may be, and there to deliver him to the keeper thereof, and requiring such keeper to receive such defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, as the case may be, for such time as the statute on which such conviction or order is founded as aforesaid shall direct, unless the sum or sums adjudged to be paid, and also the costs and charges of taking and conveying the defendant to prison, if such justice or justices shall think fit so to order, shall be sooner paid.

XXIV. And be it enacted, that where a conviction does not order the payment of any penalty, but that the defendant be imprisoned, or imprisoned and kept to hard labour, for his offence, or where an order is not for the payment of money, but for the doing of some other act, and directs that in case of the defendant's neglect or refusal to do such act he shall be imprisoned, or imprisoned and kept to hard labour, and the defendant neglects or refuses to do such act, in every such case it shall be lawful for such justice or justices making such conviction or order, or for some other justice of the peace for the same county, riding, division, liberty, city, borough, or place, to issue his or their warrant of commitment under his or their hand and seal

Power to justices to order commitment in the first instance for nonpayment of a penalty or of a sum ordered to be paid.

Power to justices to order commitment where the conviction is not for a penalty nor the order for payment of money, and the punishment is by imprisonment, &c.

Costs may be levied by distress, and in default defendant may be committed for a further term.

Imprisonment for a subsequent offence to commence at expiration of that for previous offence.

If information be dismissed costs may be recovered by distress upon prosecutor, &c., who in default may be committed.

After appeal against conviction or order justice

or hands and seals, and requiring the constable or constables to whom the same shall be directed, to take and convey such defendant to the house of correction or common gaol for the same county, riding, division, liberty, city, borough, or place, as the case may be, and there to deliver him to the keeper thereof, and requiring such keeper to receive such defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, as the case may be, for such time as the statute on which such conviction or order is founded as aforesaid shall direct; and in all such cases, where by such conviction or order any sum for costs shall be adjudged to be paid by the defendant to the prosecutor or complainant, such sum may, if the justice or justices shall think fit, be levied by warrant of distress in manner aforesaid, and in default of distress the defendant may, if such justice or justices shall think fit, be committed to the same house of correction or common gaol in manner aforesaid, there to be imprisoned for any time not exceeding one calendar month, to commence at the termination of the imprisonment he shall then be undergoing, unless such sum for costs, and all costs and charges of the said distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice or justices shall think fit so to order, shall be sooner paid.

XXV. And be it enacted, that where a justice or justices of the peace shall upon any such information or complaint as aforesaid adjudge the defendant to be imprisoned, and such defendant shall then be in prison undergoing imprisonment upon a conviction for any other offence, the warrant of commitment for such subsequent offence shall in every such case be forthwith delivered to the gaoler to whom the same shall be directed; and it shall be lawful for the justice or justices issuing the same, if he or they shall think fit, to award and order therein and thereby that the imprisonment for such subsequent offence shall commence at the expiration of the imprisonment to which such defendant shall have been previously adjudged or sentenced.

XXVI. And be it enacted, that where any information or complaint shall be dismissed with costs as aforesaid, the sum which shall be awarded for costs in the order for dismissal may be levied by distress on the goods and chattels of the prosecutor or complainant in manner aforesaid; and in default of distress or payment such prosecutor or complainant may be committed to the house of correction or common gaol in manner aforesaid, for any time not exceeding one calendar month, unless such sum, and all costs and charges of the distress, and of the commitment and conveying of such prosecutor or complainant to prison, (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid.

XXVII. And be it enacted, that after an appeal against any such conviction or order as aforesaid shall be decided, if the same shall be decided in favour of the respondents, the justice or jus-

tices who made such conviction or order, or any other justice of the peace of the same county, riding, division, liberty, city, borough, or place, may issue such warrant of distress or commitment as aforesaid for execution of the same, as if no such appeal had been brought; and if upon any such appeal the court of quarter sessions shall order either party to pay costs, such order shall direct such costs to be paid to the clerk of the peace of such court, to be by him paid over to the party entitled to the same, and shall state within what time such costs shall be paid; and if the same shall not be paid within the time so limited, and the party ordered to pay the same shall not be bound by any recognizance conditioned to pay such costs, such clerk of the peace or his deputy, upon application of the party entitled to such costs, or of any person on his behalf, and on payment of a fee of one shilling, shall grant to the party so applying a certificate that such costs have not been paid; and upon production of such certificate to any justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, it shall be lawful for him or them to enforce the payment of such costs by warrant of distress in manner aforesaid, and in default of distress he or they may commit the party against whom such warrant shall have issued in manner hereinbefore mentioned for any time not exceeding three calendar months, unless the amount of such costs and all costs and charges of the distress, and also the costs of the commitment and conveying of the said party to prison, if such justice or justices shall think fit so to order, (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid.

may issue warrants of distress for execution of the same.

Costs of appeal, how recovered.

XXVIII. And be it enacted, that in all cases where any person against whom a warrant of distress shall issue as aforesaid shall pay or tender to the constable having the execution of the same the sum or sums in such warrant mentioned, together with the amount of the expenses of such distress up to the time of such payment or tender, such constable shall cease to execute the same; and in all cases in which any person shall be imprisoned as aforesaid for nonpayment of any penalty or other sum he may pay or cause to be paid to the keeper of the prison in which he shall be so imprisoned the sum in the warrant of commitment mentioned, together with the amount of the costs, charges, and expenses (if any) therein also mentioned, and the said keeper shall receive the same, and shall thereupon discharge such person, if he be in his custody for no other matter.

On payment of penalty, &c., distress not to be levied on the party, if imprisoned for nonpayment, shall be discharged.

XXIX. And be it enacted, that in all cases of summary proceedings before a justice or justices of the peace out of sessions upon any information or complaint as aforesaid, it shall be lawful for one justice to receive such information or complaint, and to grant a summons or warrant thereon, and to issue his summons or warrant to compel the attendance of any witnesses, and to do all other necessary acts and matters preliminary to the hearing, even in cases where by the statute in that behalf such information or complaint must be heard and determined by two or more

In cases of summary proceedings one justice may issue summons or warrant, &c., and after conviction or order may issue

warrant of
distress, &c.

justices; and after the case shall have been so heard and determined one justice may issue all warrants of distress or commitment thereon; and it shall not be necessary that the justice who so acts before or after such hearing shall be the justice or one of the justices by whom the said case shall be heard and determined: provided always, that in all cases where by statute it is or shall be required that any such information or complaint shall be heard and determined by two or more justices, or that a conviction or order shall be made by two or more justices, such justices must be present and acting together during the whole of the hearing and determination of the case.

Regulations
as to whom
penalties, &c.,
to be paid.

XXXI. And be it enacted, that in every warrant of distress to be issued as aforesaid the constable or other person to whom the same shall be directed shall be thereby ordered to pay the amount of the sum to be levied thereunder unto the clerk of the division in which the justice or justices issuing such warrant shall usually act; and if any person convicted of any penalty, or ordered by a justice or justices of the peace to pay any sum of money, shall pay the same to any constable or other person, such constable or other person shall forthwith pay the same to such clerk; and if any person committed to prison upon any conviction or order as aforesaid for nonpayment of any penalty, or of any sum thereby ordered to be paid, shall desire to pay the same and costs before the expiration of the time for which he shall be so ordered to be imprisoned by the warrant for his commitment, he shall pay the same to the gaoler or keeper of the prison in which he shall be so imprisoned, and such gaoler or keeper shall forthwith pay the same to the said clerk; and all sums so received by the said clerk shall forthwith be paid by him to the party or parties to whom the same respectively are to be paid, according to the directions of the statute on which the information or complaint in that behalf shall have been framed; and if such statute shall contain no such directions for the payment thereof to any person or persons, then such clerk shall pay the same to the treasurer of the county, riding, division, liberty, city, borough, or place for which such justice or justices shall have acted, and for which such treasurer shall give him a receipt without stamp; and every such clerk, and every such gaoler or keeper of a prison, shall keep a true and exact account of all such monies received by him, of whom and when received, and to whom and when paid, and shall once in every month render a fair copy of every such account unto the justices who shall be assembled at the petty sessions for the division in which such justice or justices aforesaid shall usually act, to be holden on or next after the first day of every month, under the penalty of forty shillings, to be recovered by distress in manner aforesaid; and the said clerk shall send or deliver every return so made by him as aforesaid to the clerk of the peace for the county, riding, division, liberty, city, borough, or place within which such division shall be situate, at such times as the court of quarter sessions for the same shall order in that behalf.

Clerks to keep
accounts of
all monies
received, &c.,
in the form
in schedule
to this act,
and render
the same to
the justices
at sessions.

17 & 18 VICT. c. 125 (a).

An Act for the further amendment of the Process, Practice and Mode of Pleading in and enlarging the Jurisdiction of the Superior Courts of Common Law at Westminster, and of the Superior Courts of Common Law of the Counties Palatine of Lancaster and Durham.

[12th August, 1854.]

(THE COMMON LAW PROCEDURE ACT, 1854.)

Sect. 3. If it be made appear at any time after the issuing of the writ, to the satisfaction of the court or a judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account, which cannot conveniently be tried in the ordinary way, it shall be lawful for such court or judge, upon such application, if they or he think fit, to decide such matter in a summary manner, or to order that such matter, either wholly or in part, be referred to an arbitrator appointed by the parties, or to an officer of the court, or, in country causes, to the judge of any county court (*b*), upon such terms as to costs and otherwise as such court or judge shall think reasonable; and the decision or order of such court or judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a jury upon the matter referred.

Power to court or judge to direct arbitration before trial.

Sect. 4. If it shall appear to the court or judge that the allowance or disallowance of any particular item in such account depends upon a question of law fit to be decided by the court, or upon a question of fact to be decided by a jury or by a judge, upon the consent of both parties as hereinbefore provided, it shall be lawful for such court or judge to direct a case to be stated, or an issue or issues to be tried; and the decision of the court upon such case, and the finding of the jury or judge upon such issue or issues, shall be taken and acted upon by the arbitrator as conclusive.

Special case may be stated and questions of fact tried.

Sect. 5. It shall be lawful for the arbitrator upon any compulsory reference under this act, or upon any reference by consent of parties where the submission is or may be made a rule or order of any of the superior courts of law or equity at Westminster, if he shall think fit, and if it is not provided to the contrary, to state his award, as to the whole or any part thereof, in the form of a special case for the opinion of the court, and when an action is referred, judgment, if so ordered, may be entered according to the opinion of the court.

Arbitrator may state special case.

Sect. 6. If upon the trial of any issue of fact by a judge under this act it shall appear to the judge that the questions arising thereon involve matter of account which cannot conveniently be

Power to judge to direct arbitration at time

(a) Referred to, *ante*, p. 163.

(b) Repealed as to county court judges by 21 & 22 Vict. c. 74, s. 5.

of trial when
issues of fact
left to his
decision.

tried before him, it shall be lawful for him, at his discretion, to order that such matter of account be referred to an arbitrator appointed by the parties, or to an officer of the court, or, in country causes, to a judge of any county court (c), upon such terms, as to costs and otherwise, as such judge shall think reasonable; and the award or certificate of such referee shall have the same effect as hereinbefore provided as to the award or certificate of a referee before trial; and it shall be competent for the judge to proceed to try and dispose of any other matters in question, not referred, in like manner as if no reference had been made.

Proceedings
before and
power of such
arbitrator.

Sect. 7. The proceedings upon any such arbitration as aforesaid shall, except otherwise directed hereby or by the submission or document authorizing the reference, be conducted in like manner, and subject to the same rules and enactments, as to the power of the arbitrator and of the court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, and otherwise, as upon a reference made by consent under a rule of court or judge's order.

Power to
send back to
arbitrator.

Sect. 8. In any case where reference shall be made to arbitration as aforesaid, the court or a judge shall have power at any time and from time to time, to remit the matters referred, or any or either of them, to the re-consideration and re-determination of the said arbitrator, upon such terms, as to costs and otherwise, as to the said court or judge may seem proper.

Application
to set aside
award.

Sect. 9. All applications to set aside any award made on a compulsory reference under this act shall and may be made within the first seven days of the term next following the publication of the award to the parties, whether made in vacation or term; and if no such application is made, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged such award shall be final between the parties.

Enforcing
of awards
within period
for setting
them aside.

Sect. 10. Any award made on a compulsory reference under this act may, by authority of a judge, on such terms as to him may seem reasonable, be enforced at any time after seven days from the time of publication, notwithstanding that the time for moving to set it aside has not elapsed.

If action com-
menced by
one party
after all have
agreed to
arbitration,
court or judge
may stay
proceedings.

Sect. 11. Whenever the parties to any deed or instrument in writing to be hereafter made or executed, or any of them, shall agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person or persons claiming through or under him or them, shall nevertheless commence any action at law or suit in equity against the other party or parties or any of them, or against any person or persons claiming through or under him or them; in respect of the matters so agreed to be referred, or any of them, it shall be lawful for the court in which the action or suit is brought, or a judge thereof, on application by

(c) Repealed as to county court judges by 21 & 22 Vict. c. 74, s. 5.

the defendant or defendants, or any of them, after appearance and before plea or answer, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to such agreement as aforesaid, and that the defendant was, at the time of the bringing of such action or suit, and still is ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, to make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise as to such court or judge may seem fit: provided always, that any such rule or order may at any time afterwards be discharged or varied as justice may require.

Sect. 12. If in any case of arbitration the document authorizing the reference provide that the reference shall be to a single arbitrator, and all the parties do not, after difficulties have arisen, concur in the appointment of an arbitrator; or if any appointed arbitrator refuse to act, or become incapable of acting, or die, and the terms of such document do not show that it was intended that such vacancy should not be supplied, and the parties do not concur in appointing a new one; or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, such parties or arbitrators do not appoint an umpire or third arbitrator; or if any appointed umpire or third arbitrator refuse to act, or become incapable of acting, or die, and the terms of the document authorizing the reference do not show that it was intended such a vacancy should not be supplied, and the parties or arbitrators respectively do not appoint a new one: then in every such instance any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator respectively; and if within seven clear days after such notice shall have been served no arbitrator, umpire, or third arbitrator be appointed, it shall be lawful for any judge of any of the superior courts of law or equity at Westminster, upon summonses to be taken out by the party having served such notice as aforesaid, to appoint an arbitrator, umpire, or third arbitrator as the case may be, and such arbitrator, umpire, and third arbitrator respectively shall have the like power to act in the reference and make an award as if he had been appointed by consent of all parties.

Sect. 13. When the reference is or is intended to be to two arbitrators, one appointed by each party, it shall be lawful for either party, in case of the death, refusal to act, or incapacity of any arbitrator appointed by him to substitute a new arbitrator, unless the document authorizing the reference show that it was intended that the vacancy should not be supplied; and if on such a reference one party fail to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party shall have appointed an arbitrator, and shall have served the party so failing to appoint with notice in writing to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole arbitrator

On failure of parties or arbitrators, judge may appoint single arbitrator or umpire.

When reference is to two arbitrators, and one party fail to appoint, other party may appoint arbitrator to act alone.

in the reference, and an award made by him shall be binding on both parties as if the appointment had been by consent; provided, however, that the court or a judge may revoke such appointment on such terms as shall seem just.

Two arbitra-
tors may ap-
point umpire.

Sect. 14. When the reference is to two arbitrators, and the terms of the document authorizing it do not show that it was intended that there should not be an umpire, or provide otherwise for the appointment of an umpire, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they be called upon by notice as aforesaid to make the appointment sooner.

Award to be
made within
three months
unless parties
or court en-
large term.

Sect. 15. The arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order referring the award back, shall make his award under his hand, and (unless such document or order respectively shall contain a different limit of time) within three months after he shall have been appointed, and shall have entered on the reference, or shall have been called upon to act by a notice in writing from any party, but the parties may by consent in writing enlarge the term for making the award, and it shall be lawful for the superior court of which such submission, document, or order is or may be made a rule or order, or for any judge thereof, for good cause to be stated in the rule or order for enlargement from time to time to enlarge the term for making the award; and if no period be stated for the enlargement in such consent or order for enlargement, it shall be deemed to be an enlargement for one month; and in any case where an umpire shall have been appointed it shall be lawful for him to enter on the reference in lieu of the arbitrators, if the latter shall have allowed their time or their extended time to expire without making an award, or shall have delivered to any party or to the umpire a notice in writing stating that they cannot agree.

Agreement or
submission
in writing
may be made
a rule of court
unless a con-
trary inten-
tion appears.

Sect. 17. Every agreement or submission to arbitration by consent, whether by deed or instrument in writing not under seal, may be made a rule of any one of the superior courts of law or equity at Westminster, on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of court; and if in any such agreement or submission it is provided that the same shall or may be made a rule of one in particular of such superior courts, it may be made a rule of that court only; and if when there is no such provision a case be stated in the award for the opinion of one of the superior courts, and such court be specified in the award, and the document authorizing the reference have not, before the publication of the award to the parties, been made a rule of court, such document may be made a rule only of the court specified in the award; and when in any case the document authorizing the reference is or has been made a rule or order of any one of such superior courts, no other of such courts shall have any jurisdiction to entertain any motion respecting the arbitration or award.

24 & 25 VICT. C. 96 (a).

An Act to consolidate and amend the Law relating to Larceny.

24. Whosoever shall unlawfully and wilfully take or destroy any fish in any water which shall run through or be in any land adjoining or belonging to the dwelling house of any person being the owner of such water, or having a right of fishery therein, shall be guilty of a misdemeanor; and whosoever shall unlawfully and wilfully take or destroy, or attempt to take or destroy any fish in any water not being such as hereinbefore mentioned, but which shall be private property, or in which there shall be any private right of fishery, shall, on conviction thereof before a justice of the peace, forfeit and pay, over and above the value of the fish taken or destroyed (if any), such sum of money, not exceeding five pounds, as to the justice shall seem meet: provided, that nothing hereinbefore contained shall extend to any person angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset; but whosoever shall by angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset, unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any such water as first mentioned, shall, on conviction before a justice of the peace, forfeit and pay any sum not exceeding five pounds, and if in any such water as last mentioned, he shall, on the like conviction, forfeit and pay any sum not exceeding two pounds as to the justice shall seem meet; and if the boundary of any parish, township, or vill shall happen to be in or by the side of any such water as is in this section before mentioned, it shall be sufficient to prove that the offence was committed either in the parish, township, or vill named in the indictment or information, or in any parish, township, or vill adjoining thereto.

25. If any person shall at any time be found fishing against the provisions of this act, the owner of the ground, water, or fishery where such offender shall be so found, his servant, or any person authorized by him, may demand from such offender any rod, line, hook, net, or other implement for taking or destroying fish which shall then be in his possession, and in case such offender shall not immediately deliver up the same, may seize and take the same from him for the use of such owner: provided, that any person angling against the provisions of this act, between the beginning of the last hour before sunrise and the expiration of the first hour after sunset, from whom any implement used by anglers shall be taken, or by whom the same shall be so delivered up, shall by the taking or delivering thereof be exempted from the payment of any damages or penalty for such angling.

99. Whosoever shall aid, abet, counsel, or procure the commission of any offence which is by this act punishable on sum-

Taking fish in any water situate in land belonging to a dwelling house; in a private fishery elsewhere.

Provision respecting anglers.

Provision as to boundaries of parishes.

The tackle of fishers may be seized.

Angler, on seizure of his tackle, exempt from penalty.

Abettors in offences punishable

on summary conviction.

A person in the act of committing any offence may be apprehended without a warrant.

A justice, upon good grounds of suspicion proved on oath, may grant a search warrant.

Any person to whom stolen property is offered may seize the party offering it.

Mode of compelling the appearance of persons punishable on summary conviction.

Application of forfeitures and penalties on summary convictions.

mary conviction, either for every time of its commission, or for the first and second time only, or for the first time only, shall, on conviction before a justice of the peace, be liable, for every first, second, or subsequent offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence as a principal offender is by this act made liable.

As to apprehension of offenders, and other proceedings:

103. Any person found committing any offence punishable, either upon indictment or upon summary conviction, by virtue of this act, except only the offence of angling in the daytime, may be immediately apprehended without a warrant by any person, and forthwith taken, together with such property, if any, before some neighbouring justice of the peace, to be dealt with according to law; and if any credible witness shall prove upon oath before a justice of the peace a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever on or with respect to which any offence, punishable either upon indictment or upon summary conviction by virtue of this act, shall have been committed, the justice may grant a warrant to search for such property as in the case of stolen goods; and any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorized, and, if in his power, is required to apprehend and forthwith to take before a justice of the peace the party offering the same, together with such property, to be dealt with according to law.

105. Where any person shall be charged on the oath of a credible witness before any justice of the peace with any offence punishable on summary conviction under this act, the justice may summon the person charged to appear at a time and place to be named in such summons, and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him personally, or by leaving the same at his usual place of abode) the justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person, and bringing him before himself or some other justice of the peace; or the justice before whom the charge shall be made may (if he shall so think fit), without any previous summons (unless where otherwise specially directed), issue such warrant, and the justice before whom the person charged shall appear or be brought shall proceed to hear and determine the case.

106. Every sum of money which shall be forfeited on any summary conviction for the value of any property stolen or taken, or for the amount of any injury done (such value or amount to be assessed in each case by the convicting justice), shall be paid to the party aggrieved, except where he is unknown, and in that case such sum shall be applied in the same manner as a penalty; and every sum which shall be imposed as a penalty by any justice of the peace, whether in addition to such value or

amount or otherwise, shall be paid and applied in the same manner as other penalties recoverable before justices of the peace are to be paid and applied in cases where the statute imposing the same contains no direction for the payment thereof to any person: provided that where several persons shall join in the commission of the same offence, and shall, upon conviction thereof, each be adjudged to forfeit a sum equivalent to the value of the property or to the amount of the injury, in every such case no further sum shall be paid to the party aggrieved than such value or amount; and the remaining sum or sums forfeited shall be applied in the same manner as any penalty imposed by a justice of the peace is hereinbefore directed to be applied.

Provide where several persons join in commission of same offence.

107. In every case of a summary conviction under this act, where the sum which shall be forfeited for the value of the property stolen or taken, or for the amount of the injury done, or which shall be imposed as a penalty by the justice, shall not be paid, either immediately after the conviction, or within such period as the justice shall at the time of the conviction appoint, the convicting justice (unless where otherwise specially directed) may commit the offender to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the justice, for any term not exceeding two months, where the amount of the sum forfeited or of the penalty imposed, or of both, (as the case may be,) together with the costs, shall not exceed five pounds, and for any term not exceeding four months where the amount, with costs, shall not exceed ten pounds, and for any term not exceeding six months in any other case, the commitment to be determinable in each of the cases aforesaid upon payment of the amount and costs.

If a person summarily convicted shall not pay, &c., the justice may commit him. Scale of imprisonment.

108. Where any person shall be summarily convicted before a justice of the peace of any offence against this act, and it shall be a first conviction, the justice may, if he shall so think fit, discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by the justice.

Justice may discharge the offender in certain cases.

109. In case any person convicted of any offence punishable upon summary conviction by virtue of this act shall have paid the sum adjudged to be paid, together with costs, under such conviction, or shall have received a remission thereof from the crown, or from the lord-lieutenant or other chief governor in Ireland, or shall have suffered the imprisonment awarded for non-payment thereof, or the imprisonment adjudged in the first instance, or shall have been so discharged from his conviction by any justice as aforesaid, in every such case he shall be released from all further or other proceedings for the same cause.

A summary conviction shall be a bar to any other proceeding for the same cause.

110. In all cases where the sum adjudged to be paid on any summary conviction shall exceed five pounds, or the imprisonment adjudged shall exceed one month, or the conviction shall take place before one justice only, any person who shall think himself aggrieved by any such conviction may appeal to the

Appeal.

Costs may be levied by distress, and in default defendant may be committed for a further term.

Imprisonment for a subsequent offence to commence at expiration of that for previous offence.

If information be dismissed costs may be recovered by distress upon prosecutor, &c., who in default may be committed.

After appeal against conviction or order justice

or hands and seals, and requiring the constable or constables to whom the same shall be directed, to take and convey such defendant to the house of correction or common gaol for the same county, riding, division, liberty, city, borough, or place, as the case may be, and there to deliver him to the keeper thereof, and requiring such keeper to receive such defendant into such house of correction or gaol, and there to imprison him, or to imprison him and keep him to hard labour, as the case may be, for such time as the statute on which such conviction or order is founded as aforesaid shall direct; and in all such cases, where by such conviction or order any sum for costs shall be adjudged to be paid by the defendant to the prosecutor or complainant, such sum may, if the justice or justices shall think fit, be levied by warrant of distress in manner aforesaid, and in default of distress the defendant may, if such justice or justices shall think fit, be committed to the same house of correction or common gaol in manner aforesaid, there to be imprisoned for any time not exceeding one calendar month, to commence at the termination of the imprisonment he shall then be undergoing, unless such sum for costs, and all costs and charges of the said distress, and also the costs and charges of the commitment and conveying of the defendant to prison, if such justice or justices shall think fit so to order, shall be sooner paid.

XXV. And be it enacted, that where a justice or justices of the peace shall upon any such information or complaint as aforesaid adjudge the defendant to be imprisoned, and such defendant shall then be in prison undergoing imprisonment upon a conviction for any other offence, the warrant of commitment for such subsequent offence shall in every such case be forthwith delivered to the gaoler to whom the same shall be directed; and it shall be lawful for the justice or justices issuing the same, if he or they shall think fit, to award and order therein and thereby that the imprisonment for such subsequent offence shall commence at the expiration of the imprisonment to which such defendant shall have been previously adjudged or sentenced.

XXVI. And be it enacted, that where any information or complaint shall be dismissed with costs as aforesaid, the sum which shall be awarded for costs in the order for dismissal may be levied by distress on the goods and chattels of the prosecutor or complainant in manner aforesaid; and in default of distress or payment such prosecutor or complainant may be committed to the house of correction or common gaol in manner aforesaid, for any time not exceeding one calendar month, unless such sum, and all costs and charges of the distress, and of the commitment and conveying of such prosecutor or complainant to prison, (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid.

XXVII. And be it enacted, that after an appeal against any such conviction or order as aforesaid shall be decided, if the same shall be decided in favour of the respondents, the justice or jus-

tices who made such conviction or order, or any other justice of the peace of the same county, riding, division, liberty, city, borough, or place, may issue such warrant of distress or commitment as aforesaid for execution of the same, as if no such appeal had been brought; and if upon any such appeal the court of quarter sessions shall order either party to pay costs, such order shall direct such costs to be paid to the clerk of the peace of such court, to be by him paid over to the party entitled to the same, and shall state within what time such costs shall be paid; and if the same shall not be paid within the time so limited, and the party ordered to pay the same shall not be bound by any recognizance conditioned to pay such costs, such clerk of the peace or his deputy, upon application of the party entitled to such costs, or of any person on his behalf, and on payment of a fee of one shilling, shall grant to the party so applying a certificate that such costs have not been paid; and upon production of such certificate to any justice or justices of the peace for the same county, riding, division, liberty, city, borough, or place, it shall be lawful for him or them to enforce the payment of such costs by warrant of distress in manner aforesaid, and in default of distress he or they may commit the party against whom such warrant shall have issued in manner hereinbefore mentioned for any time not exceeding three calendar months, unless the amount of such costs and all costs and charges of the distress, and also the costs of the commitment and conveying of the said party to prison, if such justice or justices shall think fit so to order, (the amount thereof being ascertained and stated in such commitment,) shall be sooner paid.

may issue warrants of distress for execution of the same.

Costs of appeal, how recovered.

XXVIII. And be it enacted, that in all cases where any person against whom a warrant of distress shall issue as aforesaid shall pay or tender to the constable having the execution of the same the sum or sums in such warrant mentioned, together with the amount of the expenses of such distress up to the time of such payment or tender, such constable shall cease to execute the same; and in all cases in which any person shall be imprisoned as aforesaid for nonpayment of any penalty or other sum he may pay or cause to be paid to the keeper of the prison in which he shall be so imprisoned the sum in the warrant of commitment mentioned, together with the amount of the costs, charges, and expenses (if any) therein also mentioned, and the said keeper shall receive the same, and shall thereupon discharge such person, if he be in his custody for no other matter.

On payment of penalty, &c., distress not to be levied on the party, if imprisoned for nonpayment, shall be discharged.

XXIX. And be it enacted, that in all cases of summary proceedings before a justice or justices of the peace out of sessions upon any information or complaint as aforesaid, it shall be lawful for one justice to receive such information or complaint, and to grant a summons or warrant thereon, and to issue his summons or warrant to compel the attendance of any witnesses, and to do all other necessary acts and matters preliminary to the hearing, even in cases where by the statute in that behalf such information or complaint must be heard and determined by two or more

In cases of summary proceedings one justice may issue summons or warrant, &c., and after conviction or order may issue

*An Act to consolidate and amend the Law relating to
Malicious Injuries to Property (a).*

24 & 25 VICT. C. 97.

Breaking
down the
dam of a
fishery, &c.,
or mill-dam,
or poisoning
fish.

32. Whosoever shall unlawfully and maliciously cut through, break down, or otherwise destroy the dam, floodgate, or sluice of any fishpond, or of any water which shall be private property, or in which there shall be any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish, or shall unlawfully and maliciously put any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish that may then be or that may thereafter be put therein, or shall unlawfully and maliciously cut through, break down, or otherwise destroy the dam or floodgate of any millpond, reservoir, or pool, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Principals in
the second
degree and
accessories.
Abettors in
misdemeanors.

56. In the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act shall on conviction be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this act shall be liable to be proceeded against, indicted, and punished as a principal offender.

Malice
against
owner of
property
unnecessary.

58. Every punishment and forfeiture by this act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment or upon summary conviction, shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed or otherwise.

Provisions
of this act
shall apply to
persons in
possession of
the property
injured.
Intent to
injure or
defraud par-

59. Every provision of this act not hereinbefore so applied shall apply to every person who, with intent to injure or defraud any other person, shall do any of the acts hereinbefore made penal, although the offender shall be in possession of the property against or in respect of which such act shall be done.

60. It shall be sufficient in any indictment for any offence against this act, where it shall be necessary to allege an intent to injure or defraud, to allege that the party accused did the act

(a) Referred to, *ante*, pp. 110, 342.

with intent to injure or defraud (as the case may be), without alleging an intent to injure or defraud any particular person; and on the trial of any such offence it shall not be necessary to prove an intent to injure or defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to injure or defraud (as the case may be).

Particular persons need not be stated in any indictment.

61. Any person found committing any offence against this act, whether the same be punishable upon indictment or upon summary conviction, may be immediately apprehended, without a warrant, by any peace officer, or the owner of the property injured, or his servant, or any person authorized by him, and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law.

Persons in the act of committing any offence may be apprehended without a warrant.

62. Where any person shall be charged on the oath of a credible witness before any justice of the peace with any offence punishable on summary conviction under this act, the justice may summon the person charged to appear at a time and place to be named in such summons; and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person by delivering the same to him personally, or by leaving the same at his usual place of abode,) the justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person and bringing him before himself or some other justice of the peace; or the justice before whom the charge shall be made may (if he shall so think fit), without any previous summons (unless where otherwise specially directed), issue such warrant; and the justice before whom the person charged shall appear or be brought shall proceed to hear and determine the case.

Mode of compelling the appearance of persons punishable on summary conviction.

63. Whosoever shall aid, abet, counsel, or procure the commission of any offence which is by this act punishable on summary conviction, either for every time of its commission or for the first and second time only, or for the first time only, shall, on conviction before a justice of the peace, be liable, for every first, second, or subsequent offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence as a principal offender is by this act made liable.

Abettors in offences punishable on summary conviction.

64. Every sum of money which shall be forfeited for the amount of any injury done shall be assessed in each case by the convicting justice, and shall be paid to the party aggrieved, except where he is unknown, and in that case such sum shall be applied in the same manner as a penalty; and every sum which shall be imposed as a penalty by any justice of the peace, whether in addition to such amount or otherwise, shall be paid and applied in the same manner as other penalties recoverable before justices of the peace are to be paid and applied in cases where the statute imposing the same contains no directions for the payment thereof to any person: provided that where several persons shall join in the commission of the same offence, and

Application of forfeitures and penalties upon summary convictions.

Proviso where several persons join in

commission
of same
offence.

If a person
summarily
convicted
shall not
pay, &c., the
justice may
commit him.

The justice
may dis-
charge the
offender in
certain cases.

A summary
conviction
shall be a bar
to any other
proceeding
for the same
cause.

Appeal.

shall, upon conviction thereof, each be adjudged to forfeit a sum equivalent to the amount of the injury done, in every such case no further sum shall be paid to the party aggrieved than such value or amount; and the remaining sum or sums forfeited shall be applied in the same manner as any penalty imposed by a justice of the peace is hereinbefore directed to be applied.

65. In every case of a summary conviction under this act, where the sum which shall be forfeited for the amount of the injury done, or which shall be imposed as a penalty by the justice, shall not be paid, either immediately after the conviction, or within such period as the justice shall, at the time of the conviction, appoint, the convicting justice (unless where otherwise specially directed) may commit the offender to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the justice, for any term not exceeding two months, where the amount of the sum forfeited, or of the penalty imposed, or of both (as the case may be), together with the costs, shall not exceed five pounds; and for any term not exceeding four months where the amount, with costs, shall not exceed ten pounds; and for any term not exceeding six months in any other case; the commitment to be determinable in each of the cases aforesaid upon payment of the amount and costs.

66. Where any person shall be summarily convicted before a justice of the peace of any offence against this act, and it shall be a first conviction, the justice may, if he shall so think fit, discharge the offender from his conviction upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by the justice.

67. When any person convicted of any offence punishable upon summary conviction by virtue of this act shall have paid the sum adjudged to be paid, together with costs, under such conviction, or shall have received a remission thereof from the crown, or the lord lieutenant or other chief governor of Ireland, or shall have suffered the imprisonment awarded for nonpayment thereof, or the imprisonment awarded in the first instance, or shall have been so discharged from his conviction by any justice as aforesaid, he shall be released from all further or other proceedings for the same cause.

68. In all cases where the sum adjudged to be paid on any summary conviction shall exceed five pounds, or the imprisonment adjudged shall exceed one month, or the conviction shall take place before one justice only, any person who shall think himself aggrieved by any such conviction may appeal to the next court of general or quarter sessions which shall be holden not less than twelve days after the day of such conviction for the county or place wherein the cause of complaint shall have arisen; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either

remain in custody until the sessions, or shall enter into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; or if such appeal shall be against any conviction whereby only a penalty or sum of money shall be adjudged to be paid, shall deposit with the clerk of the convicting justice such a sum of money as such justice shall deem to be sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction and the costs of the appeal; and upon such notice being given, and such recognizance being entered into, or such deposit being made, the justice before whom such recognizance shall be entered into, or such deposit shall be made, shall liberate such person if in custody; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment; and in any case where after any such deposit shall have been made as aforesaid the conviction shall be affirmed, the court may order the sum thereby adjudged to be paid, together with the costs of the conviction and the costs of the appeal, to be paid out of the money deposited, and the residue thereof, if any, to be repaid to the party convicted; and in any case where after any such deposit the conviction shall be quashed, the court shall order the money deposited to be repaid to the party convicted; and in every case where any conviction shall be quashed on appeal as aforesaid, the clerk of the peace or other proper officer shall forthwith indorse on the conviction a memorandum that the same has been quashed; and whenever any copy or certificate of such conviction shall be made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence that the conviction has been quashed in every case where such copy or certificate would be sufficient evidence of such conviction.

69. No such conviction, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by certiorari into any of her majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

No certiorari,
&c.

70. Every justice of the peace before whom any person shall be convicted of any offence against this act shall transmit the conviction to the next court of general or quarter sessions which shall be holden for the county or place wherein the offence shall have been committed, there to be kept by the proper officer among the records of the court; and upon any indictment or

Convictions
to be re-
turned to
the quarter
sessions.

How far
evidence in
future cases.

information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against until the contrary be shown.

Venue in
proceedings
against per-
sons acting
under this
act.

Notice of
action.

General
issue, &c.

71. All actions and prosecutions to be commenced against any person for anything done in pursuance of this act shall be laid and tried in the county where the fact was committed, and shall be commenced within six months after the fact committed, and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one month at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought, by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant has by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be shall certify his approbation of the action.

Offences
committed
within the
jurisdiction
of the ad-
miralty.

72. All indictable offences mentioned in this act which shall be committed within the jurisdiction of the admiralty of England or Ireland shall be deemed to be offences of the same nature and liable to the same punishments as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined in any county or place in England or Ireland in which the offender shall be apprehended or be in custody, in the same manner in all respects as if they had been actually committed in that county or place; and in any indictment for any such offence, or for being an accessory to such an offence, the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence shall be averred to have been committed "on the high seas:" provided that nothing herein contained shall alter or affect any of the laws relating to the government of her majesty's land or naval forces.

Fine and
sureties for
keeping the
peace; in
what cases.

73. Whenever any person shall be convicted of any indictable misdemeanor punishable under this act, the court may, if it shall think fit, in addition to or in lieu of any of the punishments by this act authorized, fine the offender, and require him to enter into his own recognizances, and to find sureties, both or either, for keeping the peace and being of good behaviour; and in case

of any felony punishable under this act, the court may, if it shall think fit, require the offender to enter into his own recognizances, and to find sureties, both or either, for keeping the peace, in addition to any punishment by this act authorized: provided that no person shall be imprisoned under this clause for not finding sureties for any period exceeding one year.

74. Whenever imprisonment, with or without hard labour, may be awarded for any indictable offence under this act, the court may sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction. Hard labour.

75. Whenever solitary confinement may be awarded for any indictable offence under this act, the court may direct the offender to be kept in solitary confinement for any portion or portions of his imprisonment, or of his imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year; and whenever whipping may be awarded for any indictable offence under this act, the court may sentence the offender to be once privately whipped; and the number of strokes, and the instrument with which they shall be inflicted, shall be specified by the court in the sentence. Solitary confinement and whipping.

76. Every offence hereby made punishable on summary conviction may be prosecuted in England in the manner directed by the act of the session holden in the eleventh and twelfth years of Queen Victoria, chapter forty-three (*a*), so far as no provision is hereby made for any matter or thing which may be required to be done in the course of such prosecution, and may be prosecuted in Ireland before two or more justices of the peace, or one metropolitan or stipendiary magistrate, in the manner directed by the act of the session holden in the fourteenth and fifteenth years of Queen Victoria, chapter ninety-three, or in such other manner as may be directed by any act that may be passed for like purposes, and all provisions contained in the said acts shall be applicable to such prosecutions in the same manner as if they were incorporated in this act: provided that nothing in this act contained shall in any manner alter or affect any enactment relating to procedure in the case of any offence punishable on summary conviction within the city of London or the metropolitan police district or the recovery or application of any penalty or forfeiture for any such offence. Summary proceedings in England may be under the 11 & 12 Vict. c. 43, and in Ireland under the 14 & 15 Vict. c. 93;

77. The court before which any indictable misdemeanor against this act shall be prosecuted or tried may allow the costs of the prosecution in the same manner as in cases of felony; and every order for the payment of such costs shall be made out, and the sum of money mentioned therein paid and repaid, upon the same terms and in the same manner in all respects as in cases of felony. The costs of the prosecution of misdemeanors against this act may be allowed.

except in London and the metropolitan police district.

(a) See this act, *ante*, p. 528.

24 & 25 VICT. C. 100.

An Act to consolidate and amend the Law relating to Offences against the Person (a).

Inflicting
bodily injury,
with or with-
out weapon.

20. Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

Assault with
intent to
commit
felony, or
on peace
officers, &c.

38. Whosoever shall assault any person with intent to commit felony, or shall assault, resist, or wilfully obstruct any peace officer in the due execution of his duty, or any person acting in aid of such officer, or shall assault any person with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.

Offences
committed
within the
jurisdiction
of the ad-
miralty.

68. All indictable offences mentioned in this act which shall be committed within the jurisdiction of the admiralty of England or Ireland shall be deemed to be offences of the same nature and liable to the same punishments as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined in any county or place in England or Ireland in which the offender shall be apprehended or be in custody, in the same manner in all respects as if they had been actually committed in that county or place; and in any indictment for any such offence, or for being an accessory to such an offence, the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence shall be averred to have been committed "on the high seas:" provided that nothing herein contained shall alter or affect any of the laws relating to the government of her majesty's land or naval forces.

Hard labour
in gaol or
house of
correction.

69. Whenever imprisonment, with or without hard labour, may be awarded for any indictable offence under this act, the court may sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction.

Solitary con-
finement and
whipping.

70. Whenever solitary confinement may be awarded for any offence under this act, the court may direct the offender to be kept in solitary confinement for any portion or portions of any imprisonment, or of any imprisonment with hard labour, which the court may award, not exceeding one month at any one time, and not exceeding three months in any one year; and whenever whipping may be awarded for any offence under this act, the court may sentence the offender to be once privately

(a) Referred to, *ante*, p. 110.

whipped, and the number of strokes and the instrument with which they shall be inflicted shall be specified by the court in the sentence.

71. Whenever any person shall be convicted of any indictable misdemeanor punishable under this act, the court may, if it shall think fit, in addition to or in lieu of any punishment by this act authorized, fine the offender, and require him to enter into his own recognizances, and to find sureties, both or either, for keeping the peace and being of good behaviour; and in case of any felony punishable under this act otherwise than with death the court may, if it shall think fit, require the offender to enter into his own recognizances and to find sureties, both or either, for keeping the peace, in addition to any punishment by this act authorized; provided that no person shall be imprisoned for not finding sureties under this clause for any period exceeding one year.

Fine, and sureties for keeping the peace; in what cases.

72. No summary conviction under this act shall be quashed for want of form, or be removed by certiorari into any of her majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

No certiorari, &c.

74. Where any person shall be convicted on any indictment of any assault, whether with or without battery and wounding, or either of them, such person may, if the court think fit, in addition to any sentence which the court may deem proper for the offence, be adjudged to pay to the prosecutor his actual and necessary costs and expenses of the prosecution, and such moderate allowance for the loss of time as the court shall by affidavit or other inquiry and examination ascertain to be reasonable; and, unless the sum so awarded shall be sooner paid, the offender shall be imprisoned for any term the court shall award, not exceeding three months, in addition to the term of imprisonment (if any) to which the offender may be sentenced for the offence.

On a conviction for assault the court may order payment of the prosecutor's costs by the defendant.

75. The court may, by warrant under hand and seal, order such sum as shall be so awarded to be levied by distress and sale of the goods and chattels of the offender, and paid to the prosecutor, and that the surplus, if any, arising from such sale, shall be paid to the owner; and in case such sum shall be so levied the imprisonment awarded until payment of such sum shall thereupon cease.

Such costs may be levied by distress.

76. Every offence hereby made punishable on summary conviction may be prosecuted in England in the manner directed by the act of the session holden in the eleventh and twelfth years of Queen Victoria, chapter forty-three (a), and may be prosecuted in Ireland before two or more justices of the peace, or one metropolitan or stipendiary magistrate, in the manner directed by the act of the session holden in the fourteenth and fifteenth years

Summary proceedings in England may be under the 11 & 12 Vict. c. 43, and in Ireland under the 14 & 15 Vict. c. 93;

(a) See this act, *ante*, p. 528.

except in
London and
the metro-
politan police
district.

The costs
of the prose-
cution of mis-
demeanors
against this
act may be
allowed.

of Queen Victoria, chapter ninety-three, or in such other manner as may be directed by any act that may be passed for like purposes; and all provisions contained in the said acts shall be applicable to such prosecutions in the same manner as if they were incorporated in this act: provided that nothing in this act contained shall in any manner alter or affect any enactment now in force relating to procedure, in the case of any offence punishable on summary conviction, within the city of London or the metropolitan police district, or the recovery or application of any penalty or forfeiture for any such offence.

77. The court before which any misdemeanor indictable under the provisions of this act shall be prosecuted or tried may allow the costs of the prosecution in the same manner as in cases of felony; and every order for the payment of such costs shall be made out, and the sum of money mentioned therein paid and repaid, upon the same terms and in the same manner in all respects as in cases of felony.

20 & 21 VICT. C. 43 (a).

An Act to improve the Administration of the Law so far as respects summary Proceedings before Justices of the Peace.
[17th August, 1857.]

WHEREAS it is expedient that provision should be made for obtaining the opinion of a superior court on questions of law which arise in the exercise of summary jurisdiction by justices of the peace: be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Interpreta-
tion of terms.

I. In the interpretation and for the purposes of this act, the following words shall have the meaning hereinafter assigned to them; that is to say,

"Superior courts of law" shall mean the supreme courts of law at Westminster:

"Court of Queen's Bench" shall mean the Court of Queen's Bench at Westminster.

Justices on
application
of a party
aggrieved to
state a case
for the
opinion of
superior
court.

II. After the hearing and determination by a justice or justices of the peace of any information or complaint which he or they have power to determine in a summary way, by any law now in force or hereafter to be made, either party to the proceeding before the said justice or justices may, if dissatisfied with the said determination as being erroneous in point of law, apply in writing within three days after the same to the said justice or justices, to state and sign a case setting forth the facts and the grounds of such determination, for the opinion thereon of one of

(a) Referred to, *ante*, p. 370.

the superior courts of law to be named by the party applying; and such party, hereinafter called "the appellant," shall, within three days after receiving such case, transmit the same to the court named in his application, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceeding in which the determination was given, hereinafter called "the respondent."

III. The appellant, at the time of making such application, and before a case shall be stated and delivered to him by the justice or justices, shall in every instance enter into a recognizance, before such justice or justices or any one or more of them, or any other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice or justices shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the superior court, and pay such costs as may be awarded by the same; and the appellant shall at the same time, and before he shall be entitled to have the case delivered to him, pay to the clerk to the said justice or justices his fees for and in respect of the case and recognizances, and any other fees to which such clerk shall be entitled, which fees, except such as are already provided for by law, shall be according to the schedule to this act annexed marked (A.) until the same shall be ascertained, appointed, and regulated in the manner prescribed by the statute eleventh and twelfth Victoria, chapter forty-three, section thirty; and the appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same justice or justices, or, if that is impracticable, before some other justice or justices exercising the same jurisdiction who shall be then sitting, within ten days after the judgment of the superior court shall have been given, to abide such judgment, unless the determination appealed against be reversed.

Security and notice to be given by the appellant.

IV. If the justice or justices be of opinion that the application is merely frivolous, but not otherwise, he or they may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal; provided, that the justice or justices shall not refuse to state a case where application for that purpose is made to them by or under the direction of her majesty's attorney-general for England.

Justices may refuse a case where they think the application frivolous.

V. Where the justice or justices shall refuse to state a case as aforesaid, it shall be lawful for the appellant to apply to the Court of Queen's Bench upon an affidavit of the facts for a rule calling upon such justice or justices, and also upon the respondent, to show cause why such case should not be stated; and the said court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem meet, and the justice or justices upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as is hereinbefore provided.

Where the justices refuse, the Court of Queen's Bench may by rule order a case to be stated.

VI. The court to which a case is transmitted under this act shall hear and determine the question or questions of law arising

Superior court to determine the

questions on the case.

Its decisions to be final.

Case may be sent back for amendment.

Powers of superior court may be exercised by a judge at chambers.

After the decision of superior court, justices may issue warrants.

Certiorari not to be required for proceedings under this act.

Superior courts may make rules for proceedings.

"Justices" to include a stipendiary magistrate.

Recognizances how to be enforced.

thereon, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the justice or justices, with the opinion of the court thereon, or may make such other order in relation to the matter, and may make such orders as to costs, as to the court may seem fit; and all such orders shall be final and conclusive on all parties: provided always, that no justice or justices of the peace who shall state and deliver a case in pursuance of this act shall be liable to any costs in respect or by reason of such appeal against his or their determination.

VII. The court for the opinion of which a case is stated shall have power, if they think fit, to cause the case to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

VIII. The authority and jurisdiction hereby vested in a superior court for the opinion of which a case is stated under this act shall and may (subject to any rules and orders of such court in relation thereto) be exercised by a judge of such court sitting in chambers, and as well in vacation as in term time.

IX. After the decision of the superior court in relation to any case stated for their opinion under this act, the justice or justices in relation to whose determination the case has been stated, or any other justice or justices of the peace exercising the same jurisdiction, shall have the same authority to enforce any conviction or order, which may have been affirmed, amended, or made by such superior court, as the justice or justices who originally decided the case would have had to enforce his or their determination if the same had not been appealed against; and no action or proceeding whatsoever shall be commenced or had against the justice or justices for enforcing such conviction or order, by reason of any defect in the same respectively.

X. No writ of certiorari or other writ shall be required for the removal of any conviction, order, or other determination in relation to which a case is stated under this act, or otherwise, for obtaining the judgment or determination of the superior court on such case under this act.

XI. The superior courts of law may from time to time, and as often as they shall see occasion, make and alter rules and orders to regulate the practice and proceedings in reference to the cases hereinbefore mentioned.

XII. The words "justice or justices" in this act shall include a magistrate of the police courts of the metropolis and any stipendiary magistrate.

XIII. In all cases where the conditions, or any of them, in the said recognizance mentioned, shall not have been complied with, the justice or justices who shall have taken the same, or any other justice or justices, shall certify upon the back of the recognizance in what respect the conditions thereof have not been observed, and transmit the same to the clerk of the peace of the

county, riding, division, liberty, city, borough, or place within which such recognizance shall have been taken, to be proceeded upon in like manner as other recognizances forfeited at quarter sessions may now by law be enforced, and such certificate shall be deemed sufficient *prima facie* evidence of the said recognizance having been forfeited: provided, that where any such recognizances shall have been taken in England before a magistrate of the police courts of the metropolis, or by any stipendiary magistrate, all sums of money in which any person or persons shall be therein bound may, if the said magistrate shall think fit, be levied, upon such recognizance being forfeited, and on nonpayment thereof, together with the costs of the proceedings to enforce such payment, in the same manner as a police magistrate of the metropolis is now empowered to recover any penalty, forfeiture, or sum of money, by section forty-five of an act passed in the second and third years of the reign of her present majesty, intituled "An Act for regulating the Police Courts in the Metropolis," and that all and every the provisions and enactments contained in the said section forty-five shall extend to and be applicable to this act, in as ample a manner as if they had been herein re-enacted and made part of the same.

2 & 3 Vict.
c. 71, s. 45.

XIV. Any person who shall appeal under the provisions of this act against any determination of a justice or justices of the peace from which he is by law entitled to appeal to the quarter sessions shall be taken to have abandoned such last-mentioned right of appeal, finally and conclusively, and to all intents and purposes.

Appellants
under this
act not to
be allowed
appeal to
quarter
sessions.

SCHEDULE (A.)

Fees to be taken by Clerks to Justices.

For drawing case and copy, where the case does not exceed five folios of ninety words each	s. d.
Where the case exceeds five folios, then for every additional folio	10 0
For the recognizance to be taken in pursuance of the act	5 0
For every enlargement or renewal thereof	2 6
For certificate of refusal of case	2 0

commission
of same
offence.

shall, upon conviction thereof, each be adjudged to forfeit a sum equivalent to the amount of the injury done, in every such case no further sum shall be paid to the party aggrieved than such value or amount; and the remaining sum or sums forfeited shall be applied in the same manner as any penalty imposed by a justice of the peace is hereinbefore directed to be applied.

If a person
summarily
convicted
shall not
pay, &c., the
justice may
commit him.

65. In every case of a summary conviction under this act, where the sum which shall be forfeited for the amount of the injury done, or which shall be imposed as a penalty by the justice, shall not be paid, either immediately after the conviction, or within such period as the justice shall, at the time of the conviction, appoint, the convicting justice (unless where otherwise specially directed) may commit the offender to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the justice, for any term not exceeding two months, where the amount of the sum forfeited, or of the penalty imposed, or of both (as the case may be), together with the costs, shall not exceed five pounds; and for any term not exceeding four months where the amount, with costs, shall not exceed ten pounds; and for any term not exceeding six months in any other case; the commitment to be determinable in each of the cases aforesaid upon payment of the amount and costs.

The justice
may dis-
charge the
offender in
certain cases.

66. Where any person shall be summarily convicted before a justice of the peace of any offence against this act, and it shall be a first conviction, the justice may, if he shall so think fit, discharge the offender from his conviction upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by the justice.

A summary
conviction
shall be a bar
to any other
proceeding
for the same
cause.

67. When any person convicted of any offence punishable upon summary conviction by virtue of this act shall have paid the sum adjudged to be paid, together with costs, under such conviction, or shall have received a remission thereof from the crown, or the lord lieutenant or other chief governor of Ireland, or shall have suffered the imprisonment awarded for nonpayment thereof, or the imprisonment awarded in the first instance, or shall have been so discharged from his conviction by any justice as aforesaid, he shall be released from all further or other proceedings for the same cause.

Appeal.

68. In all cases where the sum adjudged to be paid on any summary conviction shall exceed five pounds, or the imprisonment adjudged shall exceed one month, or the conviction shall take place before one justice only, any person who shall think himself aggrieved by any such conviction may appeal to the next court of general or quarter sessions which shall be holden not less than twelve days after the day of such conviction for the county or place wherein the cause of complaint shall have arisen; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either

remain in custody until the sessions, or shall enter into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; or if such appeal shall be against any conviction whereby only a penalty or sum of money shall be adjudged to be paid, shall deposit with the clerk of the convicting justice such a sum of money as such justice shall deem to be sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction and the costs of the appeal; and upon such notice being given, and such recognizance being entered into, or such deposit being made, the justice before whom such recognizance shall be entered into, or such deposit shall be made, shall liberate such person if in custody; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment; and in any case where after any such deposit shall have been made as aforesaid the conviction shall be affirmed, the court may order the sum thereby adjudged to be paid, together with the costs of the conviction and the costs of the appeal, to be paid out of the money deposited, and the residue thereof, if any, to be repaid to the party convicted; and in any case where after any such deposit the conviction shall be quashed, the court shall order the money deposited to be repaid to the party convicted; and in every case where any conviction shall be quashed on appeal as aforesaid, the clerk of the peace or other proper officer shall forthwith indorse on the conviction a memorandum that the same has been quashed; and whenever any copy or certificate of such conviction shall be made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence that the conviction has been quashed in every case where such copy or certificate would be sufficient evidence of such conviction.

69. No such conviction, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by certiorari into any of her majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

No certiorari,
&c.

70. Every justice of the peace before whom any person shall be convicted of any offence against this act shall transmit the conviction to the next court of general or quarter sessions which shall be holden for the county or place wherein the offence shall have been committed, there to be kept by the proper officer among the records of the court; and upon any indictment or

Convictions
to be re-
turned to
the quarter
sessions.

How far
evidence in
future cases.

information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against until the contrary be shown.

Venue in
proceedings
against per-
sons acting
under this
act.

Notice of
action.

General
issue, &c.

71. All actions and prosecutions to be commenced against any person for anything done in pursuance of this act shall be laid and tried in the county where the fact was committed, and shall be commenced within six months after the fact committed, and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one month at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought, by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant has by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be shall certify his approbation of the action.

Offences
committed
within the
jurisdiction
of the ad-
miralty.

72. All indictable offences mentioned in this act which shall be committed within the jurisdiction of the admiralty of England or Ireland shall be deemed to be offences of the same nature and liable to the same punishments as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined in any county or place in England or Ireland in which the offender shall be apprehended or be in custody, in the same manner in all respects as if they had been actually committed in that county or place; and in any indictment for any such offence, or for being an accessory to such an offence, the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence shall be averred to have been committed "on the high seas:" provided that nothing herein contained shall alter or affect any of the laws relating to the government of her majesty's land or naval forces.

Fine and
sureties for
keeping the
peace; in
what cases.

73. Whenever any person shall be convicted of any indictable misdemeanor punishable under this act, the court may, if it shall think fit, in addition to or in lieu of any of the punishments by this act authorized, fine the offender, and require him to enter into his own recognizances, and to find sureties, both or either, for keeping the peace and being of good behaviour; and in case

bow of each boat, 3 or 4 inches below the gunwale, and they shall be painted in white oil colour on a black ground.

For boats of 15 tons burthen and upwards the dimensions of the letters and numbers shall be 18 inches in height and 2½ inches in breadth.

For boats of less than 15 tons burthen the dimensions shall be 10 inches in height and 1½ inches in breadth.

The same letter (or letters) and number shall also be painted on each side of the mainsail of the boat in black oil colour on white sails, and in white oil colour on tanned or black sails. Such letter (or letters) and number on the sails shall be one-third larger in every way than those placed on the bows of the boat.

The name of each fishing boat, and that of the port to which she belongs, shall be painted in white oil colour on a black ground on the stern of the boat, in letters which shall be at least 3 inches in height and ½ inch in breadth.

The letters, numbers, and names placed on the boats and on their sails shall not be effaced, covered, or concealed in any manner whatsoever.

All the buoys, barrels, and principal floats of each net, and all other implements of fishery shall be marked with the same letter (or letters) and number as those of the boats to which they belong. Art. VI.

These letters and numbers shall be large enough to be easily distinguished.

The owners of the nets or other fishing implements may further distinguish them by any private marks they judge proper.

The letters and numbers of British fishing boats shall, after having been entered in the registry book kept at the collectorship of customs, be inserted on the licences or other official papers of those boats. Art. VII.

The licences or other official papers of British fishing boats shall contain the description and tonnage of each boat, as well as the names of its owner and of its master. Art. VIII.

The fishermen shall, whenever required, exhibit their licences or other official papers to the commanders of the fishery cruisers and to all other persons appointed to superintend the fisheries. Art. IX.

24 & 25 VICT. C. 100.

An Act to consolidate and amend the Law relating to Offences against the Person (a).

Inflicting
bodily injury,
with or with-
out weapon.

20. Whoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

Assault with
intent to
commit
felony, or
on peace
officers, &c.

38. Whoever shall assault any person with intent to commit felony, or shall assault, resist, or wilfully obstruct any peace officer in the due execution of his duty, or any person acting in aid of such officer, or shall assault any person with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.

Offences
committed
within the
jurisdiction
of the ad-
miralty.

68. All indictable offences mentioned in this act which shall be committed within the jurisdiction of the admiralty of England or Ireland shall be deemed to be offences of the same nature and liable to the same punishments as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined in any county or place in England or Ireland in which the offender shall be apprehended or be in custody, in the same manner in all respects as if they had been actually committed in that county or place; and in any indictment for any such offence, or for being an accessory to such an offence, the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence shall be averred to have been committed "on the high seas:" provided that nothing herein contained shall alter or affect any of the laws relating to the government of her majesty's land or naval forces.

Hard labour
in gaol or
house of
correction.

69. Whenever imprisonment, with or without hard labour, may be awarded for any indictable offence under this act, the court may sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction.

Solitary con-
finement and
whipping.

70. Whenever solitary confinement may be awarded for any offence under this act, the court may direct the offender to be kept in solitary confinement for any portion or portions of any imprisonment, or of any imprisonment with hard labour, which the court may award, not exceeding one month at any one time, and not exceeding three months in any one year; and whenever whipping may be awarded for any offence under this act, the court may sentence the offender to be once privately

(a) Referred to, *ante*, p. 110.

whipped, and the number of strokes and the instrument with which they shall be inflicted shall be specified by the court in the sentence.

71. Whenever any person shall be convicted of any indictable misdemeanor punishable under this act, the court may, if it shall think fit, in addition to or in lieu of any punishment by this act authorized, fine the offender, and require him to enter into his own recognizances, and to find sureties, both or either, for keeping the peace and being of good behaviour; and in case of any felony punishable under this act otherwise than with death the court may, if it shall think fit, require the offender to enter into his own recognizances and to find sureties, both or either, for keeping the peace, in addition to any punishment by this act authorized; provided that no person shall be imprisoned for not finding sureties under this clause for any period exceeding one year.

Fine, and sureties for keeping the peace; in what cases.

72. No summary conviction under this act shall be quashed for want of form, or be removed by certiorari into any of her majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

No certiorari, &c.

74. Where any person shall be convicted on any indictment of any assault, whether with or without battery and wounding, or either of them, such person may, if the court think fit, in addition to any sentence which the court may deem proper for the offence, be adjudged to pay to the prosecutor his actual and necessary costs and expenses of the prosecution, and such moderate allowance for the loss of time as the court shall by affidavit or other inquiry and examination ascertain to be reasonable; and, unless the sum so awarded shall be sooner paid, the offender shall be imprisoned for any term the court shall award, not exceeding three months, in addition to the term of imprisonment (if any) to which the offender may be sentenced for the offence.

On a conviction for assault the court may order payment of the prosecutor's costs by the defendant.

75. The court may, by warrant under hand and seal, order such sum as shall be so awarded to be levied by distress and sale of the goods and chattels of the offender, and paid to the prosecutor, and that the surplus, if any, arising from such sale, shall be paid to the owner; and in case such sum shall be so levied the imprisonment awarded until payment of such sum shall thereupon cease.

Such costs may be levied by distress.

76. Every offence hereby made punishable on summary conviction may be prosecuted in England in the manner directed by the act of the session holden in the eleventh and twelfth years of Queen Victoria, chapter forty-three (a), and may be prosecuted in Ireland before two or more justices of the peace, or one metropolitan or stipendiary magistrate, in the manner directed by the act of the session holden in the fourteenth and fifteenth years

Summary proceedings in England may be under the 11 & 12 Vict. c. 43, and in Ireland under the 14 & 15 Vict. c. 83;

(a) See this act, *ante*, p. 528.

except in
London and
the metro-
politan police
district.

The costs
of the prose-
cution of mis-
demeanors
against this
act may be
allowed.

of Queen Victoria, chapter ninety-three, or in such other manner as may be directed by any act that may be passed for like purposes; and all provisions contained in the said acts shall be applicable to such prosecutions in the same manner as if they were incorporated in this act: provided that nothing in this act contained shall in any manner alter or affect any enactment now in force relating to procedure, in the case of any offence punishable on summary conviction, within the city of London or the metropolitan police district, or the recovery or application of any penalty or forfeiture for any such offence.

77. The court before which any misdemeanor indictable under the provisions of this act shall be prosecuted or tried may allow the costs of the prosecution in the same manner as in cases of felony; and every order for the payment of such costs shall be made out, and the sum of money mentioned therein paid and repaid, upon the same terms and in the same manner in all respects as in cases of felony.

20 & 21 VICT. C. 43 (a).

An Act to improve the Administration of the Law so far as respects summary Proceedings before Justices of the Peace.
[17th August, 1857.]

WHEREAS it is expedient that provision should be made for obtaining the opinion of a superior court on questions of law which arise in the exercise of summary jurisdiction by justices of the peace: be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Interpreta-
tion of terms.

I. In the interpretation and for the purposes of this act, the following words shall have the meaning hereinafter assigned to them; that is to say,

"Superior courts of law" shall mean the supreme courts of law at Westminster:

"Court of Queen's Bench" shall mean the Court of Queen's Bench at Westminster.

Justices on
application
of a party
aggrieved to
state a case
for the
opinion of
superior
court.

II. After the hearing and determination by a justice or justices of the peace of any information or complaint which he or they have power to determine in a summary way, by any law now in force or hereafter to be made, either party to the proceeding before the said justice or justices may, if dissatisfied with the said determination as being erroneous in point of law, apply in writing within three days after the same to the said justice or justices, to state and sign a case setting forth the facts and the grounds of such determination, for the opinion thereon of one of

(a) Referred to, *ante*, p. 370.

the superior courts of law to be named by the party applying; and such party, hereinafter called "the appellant," shall, within three days after receiving such case, transmit the same to the court named in his application, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceeding in which the determination was given, hereinafter called "the respondent."

III. The appellant, at the time of making such application, and before a case shall be stated and delivered to him by the justice or justices, shall in every instance enter into a recognizance, before such justice or justices or any one or more of them, or any other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice or justices shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the superior court, and pay such costs as may be awarded by the same; and the appellant shall at the same time, and before he shall be entitled to have the case delivered to him, pay to the clerk to the said justice or justices his fees for and in respect of the case and recognizances, and any other fees to which such clerk shall be entitled, which fees, except such as are already provided for by law, shall be according to the schedule to this act annexed marked (A.) until the same shall be ascertained, appointed, and regulated in the manner prescribed by the statute eleventh and twelfth Victoria, chapter forty-three, section thirty; and the appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same justice or justices, or, if that is impracticable, before some other justice or justices exercising the same jurisdiction who shall be then sitting, within ten days after the judgment of the superior court shall have been given, to abide such judgment, unless the determination appealed against be reversed.

Security and notice to be given by the appellant.

IV. If the justice or justices be of opinion that the application is merely frivolous, but not otherwise, he or they may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal; provided, that the justice or justices shall not refuse to state a case where application for that purpose is made to them by or under the direction of her majesty's attorney-general for England.

Justices may refuse a case where they think the application frivolous.

V. Where the justice or justices shall refuse to state a case as aforesaid, it shall be lawful for the appellant to apply to the Court of Queen's Bench upon an affidavit of the facts for a rule calling upon such justice or justices, and also upon the respondent, to show cause why such case should not be stated; and the said court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem meet, and the justice or justices upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as is hereinbefore provided.

Where the justices refuse, the Court of Queen's Bench may by rule order a case to be stated.

VI. The court to which a case is transmitted under this act shall hear and determine the question or questions of law arising

Superior court to determine the

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A SUPPLEMENT

TO

The Law

RELATING TO THE

SALMON FISHERIES

OF

ENGLAND AND WALES,

AS AMENDED BY

THE SALMON FISHERY ACT, 1873,

INCORPORATING THE

BYE-LAWS, STATUTES AND CASES TO NOVEMBER, 1876.

BY

J. W. WILLIS BUND, M.A., LL.B.,

OF LINCOLN'S INN, BARRISTER-AT-LAW,

VICE-CHAIRMAN SEVERN FISHERY BOARD.

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1876.

One Shilling.

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1876.

SINCE this Book was published in September, 1873, the Law as to the Salmon Fisheries in different parts of the country has been materially altered by the Bye-laws made under "The Salmon Fishery Act, 1873," by the various Fishery Boards. Last Session of Parliament, also, two Statutes were passed relating to the Salmon Fisheries.* It has, therefore, been thought well to take this opportunity of adding as a Supplement to the Book these subsequent additions to the Salmon Fishery Law. The Bye-laws, it is believed, include all the Bye-laws confirmed by the Secretary of State up to the 1st November, 1876.

* 39 & 40 Vict. c. 19; §. 34.

LINCOLN'S INN,
November, 1876.

SUPPLEMENT
TO THE
Law of Salmon Fisheries.

BYE-LAWS.

THE Salmon Fishery Act of 1873* gave to Boards of Conservators the power to make bye-laws upon the following subjects:—

- (1) Annual close time;
- (2) Weekly close time;
- (3) Length, size and description of moveable nets to be used for taking salmon;
- (4) Minimum size of mesh of nets;
- (5) To determine form of licence;
- (6) To vary the rate of licence duty;
- (7) To determine what marks, labels or numbers were to be fixed to nets;
- (8) To prohibit the use of nets within a certain distance of the mouths of rivers;
- (9) To determine when a gaff should be used in connection with a rod and line;
- (10) To determine when gratings should be fixed in streams;
- (11) To regulate during the annual and weekly close season the use of nets for fish other than salmon;
- (12) To prohibit the use in any inland water of a net at night.

The Salmon Fishery Act, 1876,† has also given power to make bye-laws:—

- (13) To alter the period during which it shall be illegal to take or kill trout within any fishery district.

Under these powers the different Boards of Conservators in England and Wales have made various bye-laws. The Home Office, shortly after the Salmon Fishery Act, 1873,

* 36 & 37 Vict. c. 71.

† 39 & 40 Vict. c. 19, post, p. 14.

was passed, issued an official form of specimen bye-laws for the guidance of Boards of Conservators, and this form has been generally adopted throughout the different districts.

(1) To alter the commencement and termination of the annual close season as to the whole or part of the district, so that such close season, when so altered, shall not be less than one hundred and fifty-four days, for all modes of salmon fishing, except with rod and line, and shall not commence later than the first of November in each year, and as regards fishing with rod and line, so that such close season shall not be less than ninety-two days, and shall not commence later than the first of December in each year.

The Home Office form of bye-law under this sub-section is as follows:—

"1. Alteration of Annual Close Season."

"The annual close season for all modes of salmon fishing except with rod and line shall commence on the _____ day of _____ and terminate on the _____ day of _____ both inclusive; and the annual close season for rods shall commence on the _____ day of _____ and terminate on the _____ day of _____ both inclusive."

"Heavy penalties are imposed under the Salmon Fishery Acts, 1861—1873, for the breach of any of the provisions relating to the annual close season, as fixed by this bye-law."

The annual close time has been varied in the following districts—Avon and Stour, Usk, Dovey, Clwyd and Elwy, Conway, Seiont, Cleddy, Ogmores, Coquet, Kent, Taw and Torridge, Axe, Avon and Erme, Camel, and Taf and Ely.

For *nets*, the close season in the Avon and Stour begins on the 15th August and ends on the 1st February.

In the Usk district the close season begins on the 1st day of September, but has been lengthened by bye-law to the 1st of April.

In the other districts both the beginning and the end is altered. On the Dovey the close season begins on the 14th September and ends on the 30th April.

In the Clwyd and Elwy, Conway, Seiont, Cleddy, Ogmores, and Coquet, it begins on the 15th September and ends respectively on the 15th May, 30th April, 1st March, 30th April and 25th March.

In the Taw and Torridge the close time begins on the 16th September and ends on the 30th April.

In the Axe the close time extends from the 20th September to the 30th April. On the Avon and Erme from the 20th September to 31st March. On the Camel from 1st October to 30th April.

In the Kent fishery district, in all the district that lies north of a line drawn from the ordinary high water mark at the south end of Arnside Park to the ordinary high water mark at the south end of Holme Island, and from thence in a direction due west to the Cartmel shore, it is altered for nets only; and begins on the 15th September and ends on the 1st March. In the part south of that line the close season is unaltered.

In the Taf and Ely district the close time extends from the 1st September to the 30th April.

In the remaining 25 districts, that is—Eden, Lune, Ribble, Dee, Dwyfach, Teify and Cleddy, Towy, Ogmores, Rhymney, Wye, Severn, Avon Brue,

Fowey, Tamar and Plym, Dart, Teign, Exe, Otter, Frome, Rother, Stour, Trent, Yorkshire, Eak, Tees and Tyne, no bye-law has been made, but in some of these districts the close time is not that mentioned in the Act of 1861, but has been varied by the Secretary of State under the powers given him under the 18th section (now repealed) of the Act of 1861.*

As to rods, the close time begins earlier—Avon and Stour, 2nd October to 1st February. Ends later—Usk, Taf and Ely, 2nd November to 1st April. Both commencement and termination changed—Dovey, 20th November to 30th April; Clwyd and Elwy, 15th November to 15th May; Conway, 15th November to 30th April; Seiont, 15th November to 1st March; Cleddy, 21st November to 15th March; Ogmora, 1st November to 30th March; Coquet, 15th November to 25th March; Taw and Torridge, 16th November to 31st March; Axe, 20th November to 30th April; Avon and Erme, 21st November to 31st March; Camel, 15th November to 30th April.

(2) To alter the commencement and termination of the weekly close season as to the whole or part of a district, so that such season shall not commence before six o'clock on Friday afternoon, and not terminate earlier than midnight on the Sunday following, nor continue later than twelve o'clock on the following Monday at noon, such weekly close time in no case to exceed forty-eight hours.

The following is the Home Office form of bye-law under this subsection:—

"2. Alteration of Weekly Close Season.

"The weekly close season shall commence at ——— o'clock on ——— and terminate at ——— o'clock on ———.

"Heavy penalties are imposed by the Salmon Fishery Acts, 1861—1873, for the breach of any of the provisions relating to the weekly close season as fixed by this bye-law."

In the following districts, in pursuance of this power, the weekly close season has been varied—Taw and Torridge, Lune, Ribble, Rother, Teign, Avon and Stour, Usk, Dee, Eden, Taf and Ely. In all cases, except the Dee and the Eden, the same time applies throughout the district; there the weekly close time is different in different parts of the district.

The weekly close time as varied is as follows:—On the Taw and Torridge, midnight Friday to midnight Sunday. On the Lune, Ribble, Rother and Teign, 6 A.M. Saturday to 6 A.M. Monday; Avon and Stour, Usk, and Taf and Ely, noon Saturday to noon Monday. In the Dee, below Chester Weir, midnight Friday to midnight Sunday; above Chester Weir, noon Saturday to noon Monday. In the Eden, from the Public Water to North British Railway Bridge, 6 A.M. Saturday to 6 A.M. Monday. All other parts of district, noon Saturday to noon Monday.

(3) To determine the length, size, and description of nets, and the manner of using the same (not being fixed engines) for taking salmon: Provided that no bye-law made under the authority of this section shall limit the length of a hang net, or limit the length of a draft net, so as to be less than two hundred yards.

* See ante, p. 135.

The Home Office form of bye-law under this section is as follows:—

"3. Kinds of Nets that may be lawfully used."

"(a.) No person shall use any net for taking salmon, except as follows:—

"(b.) Such nets shall not, when measured wet, exceed — yards in length, and — yards in depth.

"(c.) The manner of using such nets shall be as follows:—

"Any person offending against this bye-law shall be liable, for each offence, to a penalty not exceeding five pounds."

The following ten districts have made bye-laws under this section:—
AXE; Coquet; **DEE;** Ogmore; **RIBBLE;** Tees; **USK;** Wye; **YORKSHIRE;** **TAF** and **ELY.** In these districts only the nets mentioned may be used and only used in the way specified.

AXE.—Draft or seine net, with or without armour.

COQUET.—Draft net or hang net, to be used, with or without a boat, by any number of men not exceeding three.

DEE.—Draft nets and coracle nets of legal construction.—Draft nets not to exceed 200 yards in length, and coracle nets not to exceed 16 yards in length.

OGMORE.—Draft nets, not exceeding 200 yards in length, measured when wet.

RIBBLE.—Draft, or drift, or hang nets, consisting of a single sheet, without armour, to be always kept in motion, and not to remain stationary.—Haaf nets, not exceeding six yards in length, measured when wet.

TEES.—Draft nets, hang nets, pole or rake nets, and coracle nets.

USK.—Beating nets, armed on one or both sides, not exceeding 80 yards in length, to be used by extending the net from a point at or near one bank of the river to another point at or near the same bank, and by driving therein the fish which may have been thereby enclosed.

WYE.—The length of any beating net in use for taking salmon within the Wye fishery district shall not exceed 80 yards, measured when wet, and the manner of using any beating net shall be as follows, namely, by extending the same from a point at or near one bank of the river to another point at or near the same bank, and by driving therein the fish which may have been so enclosed.

YORKSHIRE.—Drift nets, draft or seine nets, and beating nets.—Draft or seine nets, and beating nets, shall not exceed 400 yards in length, measured when wet. Such nets shall be used in the manner in which they are ordinarily used, and shall not be fixed either to the bank or shore, or by anchoring the boat from which they are worked. Drift nets to be fastened to a boat, and to be allowed to drift or float with the tide. Draft nets to be shot from a coble or boat starting from the shore or bank of the river across or partly across the river and then home, or drawn unto the bank from which they are started.

TAF and ELY.—Draft nets not exceeding 200 yards in length.

In the other districts any net, not a fixed engine, with a legal mesh, may be used in any way so long as it is not fixed, or used so as to be practically fixed, or does not infringe the 14th section of the Act of 1878.*

(4) To determine the minimum size of the mesh of nets for catching salmon that shall be lawfully used within the district, so that such mesh shall not be less than one and a half inch from knot to knot, and so that no person

* See ante, p. 452.

shall be compelled to use a mesh larger than two and a half inches, measured when wet.

The Home Office form of bye-law is as follows:—

"4. Size of Mesh.

"The minimum size of the mesh of nets for catching salmon that may be lawfully used shall, when the nets are measured wet, be ——— inches from knot to knot, or ——— inches round.

"Any person using a net in contravention of this bye-law shall be liable, for each offence, to a penalty not exceeding five pounds."

A bye-law under this sub-section has been adopted in the following ten districts:—Avon and Erme; Axe; Camel; Cleddy; Coquet; Eden; Kent; Ogmores; Towry; Usk.

(1) In the whole of the undermentioned districts at all times of the year the minimum legal mesh of nets is one inch and a half from knot to knot:—Cleddy; Ogmores; Usk; Camel; Axe; and Coquet.

(2) In the whole of the Towry district a mesh of one and a half inches is the minimum legal mesh that may be used between the 15th June and the 18th August.

In the whole of the Eden fishery district a mesh of one and three quarter inches is the legal minimum mesh that may be used between the 15th of May and the 15th day of July inclusive.

(3) In the Avon and Erme district, in the tidal parts of the district, a minimum mesh of one inch and a half may be legally used during the whole season.

In the non-tidal parts of the Avon a minimum mesh of one and a half inches may be legally used between the 15th of June and the 14th of August.

In the Kent fishery district a minimum mesh of one and a half inches may be used in all parts thereof, except in that portion of the district that lies north of a line drawn from the ordinary high water mark at the south end of Arnside Park to the ordinary high water mark at the south end of Holme Island, and from thence in direction due west to the Cartmel shore, and which includes the rivers Kent, Bala, Winstar and their tributaries.

(5) To determine the form of licence and the manner in which licences shall be issued, provided that different forms be used for licences for fishing in public or common and in private fisheries.

The bye-law and the Home Office form of licence are as follows:—

"5. Licences.

"Licences for catching salmon under the Salmon Fishery Acts, 1861—1873, shall be issued to any person applying to ———, and paying the proper duty.

"Such licences will be of the following kinds:—

"A. Licence to fish in public or common waters with moveable instruments.

"B. Licence to fish in private waters with moveable instruments.

"C. Licence to fish in private waters with fixed instruments.

"D. Licence to fish with rod and line.

"E. General licence to fish within a private fishery where the exclusive right of fishing for salmon is claimed.

"Such licences shall be in the forms annexed to these bye-laws."

A bye-law under this sub-section has been made in the following thirty districts:—

Avon and Erme; Avon and Stour; Axe; Camel; Cleddy; Clwyd and Elwy; Coquet; Dart; Dee; Dovey; Dwyfach; Eden; Kent; Lune; Ognore; Ribble; Rother; Severn; Taw and Torridge; Tees; Teify and Ayron; Teign; Towy; Trent; Tyne; Usk; Wye; Yorkshire; Eak (Yorkshire); Taf and Ely.

(6) To vary the rate of licence duty in different parts of the district, in respect of the length or size of the net used, so that such duty shall not exceed the sum mentioned in the third schedule to the Salmon Fishery Act, 1873.*

No form of bye-law under this head has been issued by the Home Office, and no district has made any such bye-law; the alterations in the rate of licence duty when made having been made under the 25th section of the Salmon Fishery Act, 1873.†

(7) To determine what marks, labels or numbers shall be attached to licensed nets, or painted upon or affixed to boats, coracles or other vessels used in fishing.

The Home Office bye-law is as follows:—

"7. Numbering of Licences, Nets and Boats."

"Each licence for a net shall be distinguished by a number, and such number shall be attached by a label to the net when used in pursuance of such licence, and shall be conspicuously painted, as hereinafter described, upon the boat, coracle or other vessel in connection with which such net is used.

"Such number shall be painted on the outside of the boat, coracle or other vessel, near the centre of the gunwale on each side in white figures of not less than six inches high on a black ground.

"Any person offending against this bye-law shall be liable for each offence to a penalty not exceeding five pounds."

The following districts have adopted this bye-law:—

Avon and Erme; Avon and Stour; Axe; Camel; Clywd and Elwy; Coquet; Dart; Dee; Eden; Kent; Lune; Ribble; Rother; Severn; Taw and Torridge; Tees; Teify and Ayron; Teign; Towy; Tyne; Usk; Wye; Yorkshire; Eak (Yorkshire).

(8) To prohibit the use of nets within a certain distance of the mouth of any river, and of the point of confluence of rivers in any part of the district (not being a several fishery), and to erect and fix posts, buoys, and landmarks to indicate such distances respectively.

The Home Office form is the following:—

"8. Prohibition of Nets near Mouth of River."

"The use of nets within the distance of _____ yards from the mouth of the river _____ [or from the confluence of the river _____ with the river _____], which distance is indicated by anchored buoys, is hereby prohibited.

* See ante, p. 476.

† See ante, p. 457.

"Any person acting in contravention of this bye-law shall be liable for each offence to a penalty not exceeding five pounds."

Only two districts, the Dovey and the Tyne, have made bye-laws under this sub-section. Such bye-laws are as follows:—

In the DOVEY—The use of nets at the mouth of the river Dysyni or on the foreshore within 300 yards on the Towyn side thereof, which distance is indicated by six stakes numbered respectively 1, 2, 3, 4, 5, 6, driven into such foreshore at ordinary spring tide high and low-water marks, and at equal intervening distances, is hereby prohibited.

In the TYNE—The use of nets is hereby prohibited in all those parts of the sea (in which there is a public or common right of fishery) extending coastwise from a post coloured red on Sharpness Point to a post coloured blue on the Trow Rocks, and bounded seawards as follows:—First, by an imaginary straight line from the said post coloured red on Sharpness Point to the Trinity buoy coloured red near the extreme end of the north pier of the mouth of the river Tyne, then by an imaginary straight line from the said red buoy to the Trinity buoy coloured black near the extreme end of the south pier at the mouth of the river Tyne; then by an imaginary straight line from the said black buoy to the said post coloured blue on the Trow Rocks.

For the purposes of this bye-law, the water between the said piers shall be deemed to be sea.

(9) To determine the time during which it shall be lawful to use a gaff in connection with a rod and line.

The Home Office form is the following:—

"9. Use of Gaff.

"It shall not be lawful to use a gaff in connection with a rod and line except between the ——— day of ——— and the ——— day of ——— following, both inclusive.

"Any person acting in contravention of this bye-law shall be liable for each offence to a penalty not exceeding five pounds."

Fifteen districts—Camel; Conway; Dart; Dovey; Eden; Kent; Ribble; Seiont; Taf and Ely; Taw and Torridge; Teign; Teify and Ayrton; Usk; Wye and Yorkshire—have adopted a bye-law as to this. And in such districts gaffs, as auxiliary to angling, can only be used between the following days:—Eden, from 1st July to 1st November; Kent, 2nd June to 31st October; Ribble, 1st May to 15th November; Conway, 30th April to 31st October; Seiont, 1st March to 1st November; Dovey, 31st May to 20th October; Teify and Ayrton, 1st April to 15th October; Usk, 1st May to 1st November; Wye, 1st May to 1st September; Taw and Torridge, 1st June to 15th October; Camel, 1st May to 30th September; Dart, 2nd April to 31st October; Teign, 1st March to 1st September; Yorkshire, 1st May to 1st November; Taf and Ely, 1st June to 1st November.

In other districts they can be used as auxiliary to angling at any time.

(10) To determine when gratings shall be placed during certain times of the year across the head and tail race of mills and across any artificial channel, so, however, as not to diminish the supply of water to any mill, nor to interfere with the passage of vessels or otherwise injure any inland navigation or lock, but so that the provisions of the

thirteenth section of the Salmon Fishery Act, 1861,* shall not be affected.

No form of bye-law has been issued by the Home Office under this sub-section, but three districts, Camel, Severn and Usk, have adopted bye-laws as to it.

CAMEL.—The gratings provided by the Conservators to be placed across the tail races of mills and artificial channels shall be placed across such tail races from 1st June to 30th April, both inclusive.

SEVERN.—All gratings placed in pursuance of the Salmon Fishery Act, 1878, across the head race of any mill or across any artificial channel for conveying water for any purpose from a river at or near the point of divergence from such river, shall be kept shut from the 1st day of January to the 1st day of June, both inclusive, and across the tail race of any mill or other artificial channel as aforesaid, at or near the point of entry into such river, from the 1st day of September to the 31st day of December, both inclusive.

USK.—In that portion of the river Usk which lies above Lock Bridge, near Brecon, and in all the tributaries thereto which fall into it above that point, all gratings erected under the provisions of the Salmon Fishery Act, 1878, across the head race of mills, or across any artificial channel, shall be so placed from the 15th day of November to the 31st day of March, both inclusive, and in that portion of the river Usk which lies below the said Lock Bridge, and in all the tributaries thereof which fall into it below that point, all such gratings shall be so placed from the 1st day of December to the 15th day of May, both inclusive.

(11) To regulate during the annual and weekly close seasons the use within any river of nets for fish other than salmon, when such use at such times is prejudicial to the salmon fisheries: Provided that nothing in this sub-section contained shall authorize anything to be done which shall affect any part of any river in which part there is a several right of fishery, or any river or part of any river where the breadth at low water is greater than six miles.

The Home Office bye-law under this sub-section is as follows:—

“11. *Prohibition of Nets for other Fish than Salmon during Annual and Weekly Close Seasons.*

“During the annual and weekly close seasons, nets for any fish other than salmon shall not be used, except in accordance with the following conditions:—

“Any person acting in contravention of this bye-law shall be liable, for each offence, to a penalty not exceeding five pounds.

“This bye-law does not apply to any part of the district where there is a several right of fishery, or to any part of the river where the breadth at low water is greater than six miles.”

Three districts, the Avon and Stour, Dee and the Severn, have made bye-laws under it.

AVON AND STOUR.—During the weekly close season, nets for other fish than salmon shall not be used of a mesh smaller than that used for catching salmon.

* See ante, p. 414.

DEE.—During the annual close season no nets for catching or taking any fish other than salmon shall be used except draft nets and trawl nets, and during the weekly close season no nets for any other fish than salmon shall be used except trawl nets.

SEVERN.—During the annual close season all lampern wheels set on or within twenty yards of any weir shall be cross-prowed.

Between sunset on Saturday and six o'clock on Monday morning, during the annual and weekly close seasons, no nets shall be used for the taking of shrimps in the estuary of the river Severn.

During the annual close season no net of any description, except fixed nets for catching eels and sprats, and landing nets used in connection with a rod and line, shall be used in the night time; that is to say, between the expiration of the first hour after sunset and the last hour before sunrise.*

(12) To prohibit the use in any inland water of any net, except a landing-net or a net for taking eels, between the expiration of the first hour after sunset and the last hour before sunrise.

The Home Office bye-law is the following:—

"12. Nets not to be used in the Night Time.

"Between the expiration of the first hour after sunset and the commencement of the last hour before sunrise, no person shall use any net in any inland waters except a landing-net or a net for taking eels.

"Any person acting in contravention of this bye-law shall be liable, for each offence, to a penalty not exceeding five pounds."

Fifteen districts, Avon and Erme, Avon and Stour, Axe, Cleddy, Clwyd and Elwy, Coquet, Dee, Kent, Ogmore, Rother, Taw and Torridge, Teign, Uak, Taf and Ely, and Yorkshire, have made bye-laws prohibiting night netting throughout their districts in inland waters; and one district, the Severn, has made a bye-law prohibiting night netting in so much of their district as lies above Diglis Weir on the Severn, and in the river Teme and its tributaries.

(13) To alter the period during which it shall be illegal to take or kill trout within any fishery district, or in any portion of a fishery district, so that the period within which trout may not be taken or killed shall not commence earlier than the second day of September nor later than the second day of November in each year, and shall not be less than one hundred and twenty-three days.

This is under the Act of 1876, 39 & 40 Vict. c. 34.† No form of bye-law has been issued as to it. The following form may be used:—

"Alteration of Period during which it is Illegal to take Trout.

"In the fishery district [or in so much of the fishery district as (*here define limits*)], the period during which it shall be illegal to take trout shall be between the — day of — and the — day of — following, both inclusive.

"Any person acting in contravention of this bye-law shall be liable, for each offence, to a penalty not exceeding five pounds."

* These bye-laws do not apply to any part of the district where there is a several right of fishery, nor to any part of the river where the breadth at low water is greater than six miles.

† See post, p. 14.

STATUTES.

In the last session of Parliament two acts were passed on the subject of salmon fisheries. The one, 39 & 40 Vict. c. 19, giving to Board of Conservators the power to make bye-laws as to varying the time for the capture of trout; the other, 39 & 40 Vict. c. 34, repealing so much of the Salmon Fishery Act, 1873, as prohibited taking elvers or the fry of eels, and making the capture and sale of elvers an offence in the Severn fishery district alone.

These acts are as follows:—

39 & 40 VICT. CAP. 19.

An Act to amend the Law relating to Salmon Fisheries in England and Wales. [27th June, 1876.]

Whereas it is expedient to amend the laws relating to salmon fisheries in England and Wales:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. *Short Title.*] This act may be cited for all purposes as the Salmon Fishery Act, 1876; and this act and the Salmon Fishery Acts, 1861, 1865, and 1873, may be cited together as the Salmon Fishery Acts, 1861 to 1876.

2. *Construction of Act.*] This act, so far as is consistent with the tenor thereof, shall be read as one with the Salmon Fishery Acts, 1861, 1865 and 1873.

3. *Commencement of Act.*] This act shall not come into operation until the first day of September, one thousand eight hundred and seventy-six, which date is hereinafter referred to as the commencement of this act.

4. *Board of Conservators may make Bye-laws as to Time for killing Trout.*] Subject to the provisions contained in sections thirty-nine, forty, forty-one, forty-two, forty-three, forty-four and forty-five of the Salmon Fishery Act, 1873, for the making, confirming, publishing and proving of bye-laws, a Board of Conservators may, at any time after the commencement of this act, make a bye-law and alter the same from time to time for the following purpose; (that is to say,)

To alter the period during which it shall be illegal to take or kill trout within any fishery district, or in any portion of a fishery district, so that the period within which trout may not be taken or killed shall not commence earlier than the second day of September nor later than the second day of November in each year, and shall not be less than one hundred and twenty-three days;

and the said Board may by any such bye-law impose a penalty not exceeding five pounds for each offence against such bye-law, and such penalties

shall be recovered and applied in manner provided in and by the Salmon Fishery Act, 1873.

It will be seen that under this act there is no power to revoke a bye-law once made. The parts of the Salmon Fishery Act, 1873, incorporated are only those for making, confirming, publishing and proving the bye-laws; the power of revoking seems expressly to be omitted. There is also no power to allow the sale of any trout during the extended time at which it may be lawful to take them. It is also extremely doubtful if there is power to extend the time during which it is lawful to take char.

39 & 40 VICT. CAP. 84.

An Act to amend the Law relating to Elver Fishing. [24th July, 1876.]

Whereas by the fifteenth section of the Salmon Fishery Act, 1873, it was enacted that "no person between the first day of January and the twenty-fourth day of June, inclusive, shall hang, fix or use in any salmon river any baskets, nets, traps or devices for catching eels or the fry of eels:"

And whereas it is expedient to amend the law relating to elver fishing:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Repeal of Part of 15th Section of 36 & 37 Vict. c. 71.*] From and after the passing of this act, so much of the fifteenth section of the Salmon Fishery Act, 1873, as prohibits the taking of elvers or the fry of eels shall be and the same is hereby repealed.

2. *Close Period for Elvers in the River Severn Fishery District.*] With respect to the River Severn Fishery District the period between the first day of January and the last day of February, inclusive, and the period between the twenty-sixth day of April and the twenty-fourth day of June, inclusive, shall each be a close period for elvers or the fry of eels, and the following provisions shall apply:—

- (a.) Any person who, during either of the said close periods, shall take or use any instrument for taking in the River Severn Fishery District elvers or the fry of eels shall, on summary conviction before two justices, be liable to a penalty not exceeding twenty shillings.
- (b.) Any person who, during either of the said close periods, shall sell or have in his possession for sale elvers or the fry of eels within the hundreds of Kiftgate, Deerhurst, Dudstone and Kings Barton, Berkeley, Duchy of Lancaster, Westbury, Westminster, and Tewkesbury, in the county of Gloucester, shall, on summary conviction before two justices, be liable to a penalty not exceeding twenty shillings, unless he satisfies the court before whom he is charged that such elvers or the fry of eels were not taken within the Severn Fishery District.

For the purposes of this act the River Severn Fishery District shall mean and include the River Severn Fishery District as defined by the

certificate of one of her Majesty's principal secretaries of state, dated 18th January, 1866.

It would seem doubtful if the Severn Board are entitled to the penalties under this act. Under the Act of 1873, the penalties were expressly given to them, but there is no similar provision here.

An important point upon the construction of the Salmon Fishery Act, 1861, was decided by the Divisional Court of Appeal from inferior courts in January, 1876, in the case of *Ruther v. Harris* (L. R., 1 Ex. Div. 97; 33 L. T., N. S. 825; 45 L. J., M. C. 103; 40 J. P. 86): it was there held that if a person *fishes* for salmon during the weekly close season he forfeits the net or moveable instrument with which he fishes, whether he actually takes a salmon or not; the actual taking a salmon not being a condition precedent to the forfeiture.

The case of *Dodd v. Armour*, cited ante, p. 215, as unreported, will be found reported in 31 J. P. 773.

In order to enable Boards of Conservators more effectually to carry out the provisions of the 49th and 50th sections of the Salmon Fishery Act, 1873, as to the compulsory purchase of weirs and land for fish passes, the Home Office have issued instructions to the different Boards, a copy of which is added:—

MEMORANDUM, 1876. Salmon Fishery Act, 1873.

Home Office Regulations for the guidance of Boards of Conservators applying for Provisional Orders under Sections 49 and 50 of the Salmon Fishery Act, 1873.

1st. General Principles on which Applications for the Compulsory Purchase of Weirs, Dams, Fishing Milldams, Fixed Engines, or Artificial Obstructions, and Premises used in connection therewith, will be entertained by the Secretary of State. (Salmon Fishery Act, 1873, s. 49.)*

No application for the compulsory purchase of any weir, &c., will be entertained by the Home Office unless such weir, &c., is situate in a river frequented by salmon, and hinders the passage of salmon up or down such river.

No application for the compulsory purchase of a weir, &c., connected with a mill affording employment to a considerable number of persons, or producing a high rental, will be entertained by the Home Office unless there is a reasonable probability that, either by the application of steam power or by some other means, the employment afforded by the mill, and its letting value, may be maintained.

No application for the compulsory purchase of a weir, &c., will be entertained by the Home Office unless the Board of Conservators has previously offered to purchase such weir, &c., by agreement, and either (1) the owner has been unable or unwilling to treat; or (2) the Board and the owner thereof have been unable to agree as to the price to be paid for it.

No application will be entertained by the Home Office for the compulsory purchase of any weir constructed under any Act of Parliament for the purpose of improving the navigation of any river or of supplying any town with water.

* See ante, p. 469.

2nd. General Principles on which Applications for the Compulsory Purchase of Land for the purpose of constructing Fish-Passes will be entertained by the Secretary of State. (Salmon Fishery Act, 1873, s. 50.)*

No application for the compulsory purchase of any land will be entertained by the Home Office unless (1) such land is immediately adjacent to a weir, &c., situate in a river frequented by salmon, which weir, &c. hinders the passage of salmon up or down such river; and (2) there are reasons for believing that a fish-pass cannot conveniently or successfully be attached to the weir itself.

Applications for a larger quantity of land than is necessary for the purpose of constructing a fish-pass will not be entertained by the Home Office.

N.B.—It is believed that from 10 to 30 perches of land will be sufficient in every case for this purpose.

Procedure on the Presentation of a Petition under Section 49 or 50 of the Salmon Fishery Act, 1873.

1st. As to petitions under section 49 of the Salmon Fishery Act, 1873, for power to purchase a weir, &c. by compulsion:

I. The Board of Conservators for the district should present a petition to the Secretary of State for the Home Department, as directed by section 49 of the Salmon Fishery Act, 1873.†

II. The petition should be in duplicate; it should be written on foolscap paper; it should be signed, on behalf of the Board, by its chairman, and secretary or clerk, and sealed with the common seal of the Board.

III. The petition should contain the following information:—

- (1.) The situation of the weir, &c., which it is intended to purchase.
- (2.) The names of the owner or owners, and occupier or occupiers, of the weir, &c.
- (3.) The purpose for which the weir, &c. is maintained, and its approximate value.
- (4.) The effect which the weir, &c. is supposed to have on the fisheries of the district.
- (5.) The reasons why the Board of Conservators have been unable to purchase the weir, &c. by agreement.
- (6.) A description of the premises, if any, to be taken with the weir, &c.
- (7.) The means which the Board of Conservators have at their disposal, or which they rely on obtaining, for effecting the purchase.

IV. The petition must have annexed to it—

- (1.) Copies of the notices served on the owner and occupier, or owners and occupiers, of the weir, &c., one month previous to the presentation of the petition.
- (2.) A statutory declaration from the person or persons who served such notices, that the notices have been duly served, and the names and addresses of the persons on whom they have been so served.
- (3.) A plan in duplicate, either upon an ordnance map or other chart, showing the exact position of the weir, &c., which it is proposed to purchase.
- (4.) A plan, also in duplicate, showing the form and construction of the weir, &c., which it is proposed to purchase, and the premises, if any, to be purchased with it.

* See ante, p. 470.

† See ante, p. 469.

2nd. As to petitions under section 50 of the Salmon Fishery Act, 1873,* for power to purchase by compulsion land for the purpose of making a fish-pass:

I. The Board of Conservators for the district should present a petition to the Secretary of State for the Home Department, as directed by section 50 of the Salmon Fishery Act, 1873.

II. The petition should be in duplicate, written on foolscap paper, signed, on behalf of the Board, by its chairman, and secretary or clerk, and sealed with the common seal of the Board.

III. The petition should contain the following information :—

- (1.) The situation and extent of the land which it is intended to purchase.
- (2.) The names of the owner or owners, and occupier or occupiers, of the land and of the weir, &c.
- (3.) The effect which the weir, &c. is supposed to have on the fisheries of the district.
- (4.) The uses, agricultural or otherwise, made of the land, and its approximate value.
- (5.) A description of the fish-pass intended to be constructed on the land, and its estimated cost.
- (6.) The means which the Board of Conservators have at their disposal, or which they rely on obtaining, for effecting the purchase.

IV. The petition must have annexed to it—

- (1.) Copies of the notices served on the owner or owners, and occupier or occupiers, of the land one month previous to the presentation of the petition.
- (2.) A statutory declaration from the person or persons who served such notices that the notices have been duly served, and the names and addresses of the persons on whom they have been so served.
- (3.) A plan in duplicate, either on an ordnance map or other chart, showing the exact position of the land which it is proposed to purchase.
- (4.) A plan, also in duplicate, showing the form and construction of the fish-pass which it is proposed to construct in the land to be purchased.

Procedure subsequent to the Presentation of a Petition, whether under Section 49 or Section 50 of the Salmon Fishery Act, 1873.*

During the month succeeding the service of the notices upon them, the owner and occupier, or either of them, or any other person interested in the matter, may transmit any objections or representations to the Home Office.

The objections, which must be in duplicate, must be written on foolscap paper, and copies of them must be forwarded to the conservators of the district.

Should the Secretary of State determine to proceed in the matter, the following course will be adopted :—

1. One copy of the petition of the Conservators, and of the map and plan attached to it, will be deposited in the Salmon Fisheries Department of the Home Office, and will be available at all reasonable times for the inspection of any persons interested in the matter.
2. One copy of the objections or representations, if any, made respecting such petition will also be deposited in the same place, and will be similarly available for inspection.
3. So soon as conveniently may be after the receipt of such petition, the

* See ante, p. 470.

Home Office will send down an inspector into the district in which the premises to be purchased are situated.

4. The inspector will hold a public inquiry in some convenient place in the vicinity of the premises, and the Conservators, owner, occupier, and other persons interested in the matter will be heard before such inspector.
5. One fortnight at the least before the date of the inquiry notice of the inquiry by the inspector will be given to the Conservators, and to the owner and occupier of the premises to be taken, and to any other person or persons who have made any objections or representations to the Home Office respecting the purchase of the premises.
6. On the report of the inspector, the Home Office will either refuse the application or prepare a provisional order authorizing the Board to put in force, with reference to such weir, &c., or land, the powers of the Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, with such conditions and modifications as the Secretary of State may think fit.
7. Copies of the provisional order so made will be forwarded to the Conservators, who will be required to serve them on the owner and occupier of the premises to be purchased.
8. On the receipt of a statutory declaration from the person or persons so serving these orders, that they have been duly served, the Home Office will incorporate the order in a bill which will be submitted for the sanction of Parliament.

Home Office, May, 1876.

As an example of a Provisional Order under the 49th and 50th sections of the Salmon Fishery Act, 1873, and the act of Parliament confirming the same, the act 38 & 39 Vict. c. clxx, is inserted, which confirmed the purchase of a piece of land for a fish pass.

38 & 39 VICT. C. CLXX.

An Act to confirm a Provisional Order made by one of Her Majesty's principal Secretaries of State, in pursuance of the Salmon Fishery Act, 1873, relating to the Taw and Torridge Salmon Fishery District.

[2nd August, 1875.]

Whereas one of Her Majesty's principal secretaries of state has, under the provisions of the Salmon Fishery Act, 1873, made the Provisional Order set forth in the schedule hereto annexed relating to the Taw and Torridge Salmon Fishery District:

And whereas it is requisite that the said Order should be confirmed by Parliament, &c., &c.

1. *The Provisional Order in Schedule confirmed.*] The Order set out in the schedule hereunto annexed shall be and the same is hereby confirmed, and all the provisions thereof shall, from and after the passing of this act, have full validity and force.

2. *Short Title.*] This act may be cited as the Salmon Fishery Act, 1873, Provisional Order (Taw and Torridge Salmon Fishery District) Confirmation Act, 1875.

SCHEDULE.

SALMON FISHERY ACT, 1873 (36 & 37 VICT. c. 71, s. 50).

TAW AND TORRIDGE SALMON FISHERY DISTRICT.

Provisional Order to enable the Board of Conservators for the Taw and Torridge Salmon Fishery District to put in Force the Compulsory Clauses of the Lands Clauses Consolidation Act, 1845, for the purpose of making a Fish Pass.

To the Board of Conservators for the Taw and Torridge Salmon Fishery District, and all others whom it may concern.

Whereas the Board of Conservators for the above-named district being, from the circumstances of the case, unable to attach a fish pass to a certain weir called Monk Okehampton Weir, on the river Okement in the said district, under the provisions of the twenty-third section of the Salmon Fishery Act, 1861, presented to me a petition, praying to be allowed to put in force the powers of the Lands Clauses Consolidation Act with respect to the purchase and taking of land otherwise than by agreement, for the purpose of purchasing and taking so much of the land on the left bank of the said river adjoining the said weir as might be necessary for such fish pass :

And whereas due proof was made to me of notice having been given to the owners and occupiers of the said weir, and also to the owner and occupier of the land proposed to be taken, and I satisfied myself that the Board are provided with funds for the purchase of such land, and the construction of such fish pass :

And whereas on receipt of the said petition I directed an inquiry to be held in the district as to the propriety of assenting to the prayer of such petition, which inquiry has been held, and report made to me thereon :

Now, therefore, I, the Right Honourable Richard Assheton Cross, one of her Majesty's principal Secretaries of State, in pursuance of the powers given in the Salmon Fishery Act, 1873, do, by this my Order, empower the Board of Conservators for the Taw and Torridge Salmon Fishery District, from and after the date of the Act of Parliament confirming this Order, to put in force, with reference to the land and premises described in the schedule hereto annexed, or any part thereof, the powers of the Lands Clauses Consolidation Act, 1845, with respect to the purchase and taking of lands otherwise than by agreement ; provided that the said Board shall not by virtue of this Order take more than twelve perches of land.

Given this third day of June, in the year one thousand eight hundred and seventy-five.

Whitehall.

(Signed) R. ASSHETON CROSS.

The SCHEDULE above referred to.
Parish of HATHERLEIGH in the County of DEVON.

Description.	Name of Owner.	Name of Occupier.
Field and bank.	Hugh Mallett.	William Rich.



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